APEC
RUSSIA 2012

ANTI-CORRUPTION AND TRANSPARENCY WORKING GROUP

INTERIM REPORTS ON IMPLEMENTATION OF APEC ANTI-CORRUPTION COMMITMENTS

Russia, Kazan 2012

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BRUNEI DARUSSALAM

ECONOMY: Brunei Darussalam
CALENDAR YEAR: 2012
LAST UPDATED: May 9, 2012

LEADERS' AND MINISTERS' COMMITMENTS

- **2010**: We agreed to enhance our efforts to improve transparency and eliminate corruption, including through regular reporting via ACT and other relevant fora on economies' progress in meeting APEC Leaders' commitments on anti-corruption and transparency.
- **2006:** Ministers endorsed APEC 2006 key deliverables on Prosecuting Corruption, Strengthening Governance and Promoting Market Integrity and encouraged member economies to take actions to realize their commitments. Ministers also encouraged all economies to complete their progress reports on the implementation of ACT commitments by 2007. Ministers welcomed APEC efforts to conduct a stocktaking exercise of bilateral and regional arrangements on anti-corruption in cooperation with relevant international and regional organizations, and encouraged member economies to fully participate in the stocktaking activities.

Objective: Where appropriate, to self-assess progress against APEC Leaders' and Ministers' commitments on anti-corruption, transparency, and integrity and to identify capacity building needs to assist the ACT to identify priority areas for future cooperation.

EXECUTIVE SUMMARY

1. Summary of main achievements/progress in implementing the commitments of APEC Leaders and Ministers on anti-corruption, transparency, and integrity since 2004.
   - Brunei Darussalam ratified United Nations Convention against Corruption (UNCAC) on 2nd December 2008
   - The Anti-Corruption Bureau as the leading agency to combat corruption in Brunei Darussalam has set up an Integrity and Good Governance Centre in May 2009 to promote transparency and good governance.
   - The Prevention of Corruption Act (Chapter 131) was amended in 2010 incorporating 6 new provisions.
   - Good practice on handling of gifts in public service was introduced in late 2010.

2. Summary of forward work program to implement Leaders' and Ministers' commitments.

- Amendment to the Prevention of Corruption Act (Chapter 131) in line with UNCAC

3. Summary of capacity building needs and opportunities that would accelerate/strengthen the implementation of APEC Leaders' and Ministers' commitments by your economy and in the region.

I. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO UNCAC PROVISIONS

LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Take All Appropriate Steps Towards Ratification of, or Accession to, and Implementation of the UNCAC:
- Intensify our efforts to combat corruption and other unethical practices, strengthen a culture of transparency, ensure more efficient public management, and complete all appropriate steps to ratify or accede to, and implement the UNCAC.
- Develop training and capacity building efforts to help on the effective implementation of the UNCAC's provisions for fighting corruption.
- Work to strengthen international cooperation in preventing and combating corruption as called for in the UNCAC including extradition, mutual legal assistance, the recovery and return of proceeds of corruption.

I.A. Adopting Preventive Measures (Chapter II, Articles 5-13)

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RELEVANT UNCAC PROVISIONS

See below.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Article 5 of the UNCAC requires States Parties to implement and maintain effective, coordinated anti-corruption policies. It also requires State Parties to establish and promote effective practices aimed at the prevention of corruption. The Anti-Corruption Bureau set up the Corruption Prevention Section in 2003 to study working practices and procedures of certain government agencies and to recommend the introduction and make proposals for amendments to the existing anti-corruption policies and practices. In the 2010 amendment to the Prevention of Corruption Act (Chapter 131), the preventive duties of the Director and officers of the Bureau were incorporated under Section 4A(c), (d) and (e). The provisions stipulate the duty of the Director and officer of the Bureau to examine practices, systems and procedures of public bodies and private sectors (upon request) which are prone to corruption and to recommend on the changes to such practices, systems and procedures.

Article 6 of the UNCAC – The Anti-Corruption Bureau was set up in February 1982.

Article 7 of the UNCAC - The principles and criteria enumerated under paragraph 1 are incorporated in the present system of recruitment of civil servants in Brunei. The appointment and promotion of public servant are governed by Public Officers (Appointment and Promotions) Regulations.

Article 8 of the UNCAC - The Public Service Commission Act and The Public Servants (Conduct and Discipline) Regulations govern the conduct and discipline of public servants.

Article 9 of the UNCAC – Brunei Darussalam's Financial Regulations and Government Circulars provide rules for management of public finances.

Article 10 of the UNCAC – Existing "Work Procedure Manual" and "Tekad Pemedulian Orang Ramai" was introduced by the Civil Service Department, Brunei Darussalam.

I. B. Criminalization and Law Enforcement (Chapter III)

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RELEVANT UNCAC PROVISIONS

See below.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Article 15 and 16 of the UNCAC – Brunei Darussalam criminilises active and passive bribery of national public officials, foreign public officials and officials of public international organizations under sections 5, 6 and 11 of the Prevention of Corruption Act (Cap 131). Further offences are under sections 161-165 and 213-215 of the Penal Code (Cap 22).

Article 17 of the UNCAC - The offences of criminal breach of trust by a public servant (section 409 Penal Code) and criminal misappropriation (section 403 Penal Code) covers the provision under this article.

Article 20 of the UNCAC – Section 12 of the Prevention of Corruption Act (Cap 131) criminalizes the acts set forth in the provision. Section 12 provides for an offence of possession of unexplained property by a public official.

Article 21 of the UNCAC – Bribery in the prívate sector is covered by Section 5 of the Prevention of Corruption Act (Cap 131).

Article 22 of the UNCAC - The establishment of the offence of embezzlement of property by a person working in the private sector by virtue of his or her position is covered in Sections 405-409 of the Penal Code (Cap 22).

Article 23 of the UNCAC - The applicable provisions are in the Anti-Money Laundering Act (Cap 209) and Criminal Conduct (Recovery of Proceeds) Order, 2000.

Article 27 of the UNCAC - Criminal liability under article 27 are provided under the PCA – section 14 (attempt) and section 15 (conspiracy). For offences established under the Convention but not covered under the PCA, the related provisions under Penal Code are found under chapter V (Abetment), chapter VA (Criminal Conspiracy) and section 511 (attempt).

Article 40 of the UNCAC - Under section 23 of the PCA (see also section 56 of the Criminal Procedure Code (Cap 7)), the Anti-Corruption Bureau has special powers of investigations which effectively lift the bank secrecy laws in corruption investigations.

Article 42 of the UNCAC - The applicable provisions are sections 37 of PCA and 7 of the Criminal Procedure Code (Cap.7).

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

Amendment to the Prevention of Corruption Act (Chapter 131)

I.C. Preventing Money-Laundering

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RELEVANT UNCAC PROVISIONS

See below.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Article 14 of the UNCAC – Established since February 2007, Financial Intelligence and Enforcement Division (FIED) is the agency in Brunei Darussalam responsible for receiving, requesting, analysing and disseminating information concerning suspected proceeds of crime, money-laundering and terrorist financing. The role of FIED is to receive, analyse and store Suspicious Transactions Reports (STRs) and to disseminate them to the appropriate law enforcement agencies for investigation. The Financial Intelligence Unit acts as the secretariat for National Committee on Anti Money Laundering and Terrorism Financing (NAMLC). Relevant legislations under this provision are the Anti-Money Laundering Act (Cap 209) and Criminal Conduct (Recovery of Proceeds) Order 2000. The Anti-Corruption Bureau is the committee member of NAMLC.

II. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO APEC INEGRITY STANDARDS (CROSS CHECK WITH I.A. ABOVE)

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LEADERS' AND MINISTERS' COMMITMENTS
See below.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Santiago Commitment/COA: Strengthen Measures to Effectively Prevent and Fight Corruption and Ensure Transparency by Recommending and Assisting Member Economies to:

- ***Establish objective and transparent criteria that assure openness for merit, equity, efficiency for the recruitment of civil servants, and promote the highest levels of competence and integrity;***

Article 7 of the UNCAC - The principles and criteria enumerated under paragraph 1 are incorporated in the present system of recruitment of civil servants in Brunei. The appointment and promotion of public servant are governed by Public Officers (Appointment and Promotions) Regulations.

- ***Adopt all necessary measures to enhance the transparency of public administration, particularly with regard to organization, functioning and decision-making processes;***

Article 7 of the UNCAC - The principles and criteria enumerated under paragraph 1 are incorporated in the present system of recruitment of civil servants in Brunei. The appointment and promotion of public servant are governed by Public Officers (Appointment and Promotions) Regulations.

- Develop and implement appropriate public financial disclosure mechanisms or codes of conduct for senior-level public officials [SOM III: Guidelines];

III. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO SAFE HAVENS (CROSS CHECK WITH I.C. ABOVE):

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LEADERS' AND MINISTERS' COMMITMENTS

See below.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Santiago Commitment/COA: Deny safe haven to officials and individuals guilty of public corruption, those who corrupt them, and their assets:

- ***Promote cooperation among financial intelligence units of APEC members including, where appropriate, through existing institutional mechanisms.***

- ***Encourage each economy to promulgate rules to deny entry and safe haven, when appropriate, to Officials and individuals guilty of public corruption, those who corrupt them, and their assets.***

- ***Implement, as appropriate, the revised Financial Action Task Force (FATF) 40 Recommendations and FATF's Special Recommendations (Santiago Course of Action)***

Established since February 2007, Financial Intelligence and Enforcement Division (FIED) is the agency in Brunei Darussalam responsible for receiving, requesting, analysing and disseminating information concerning suspected proceeds of crime, money-laundering and terrorist financing. The role of FIED is to receive, analyse and store Suspicious Transactions Reports (STRs) and to disseminate them to the appropriate law enforcement agencies for investigation. The Financial Intelligence Unit acts as the secretariat for the National Committee on Anti Money Laundering and Terrorism Financing (NAMLC). Relevant legislations under this provision are the Anti-Money Laundering Act (Cap 209) and Criminal Conduct (Recovery of Proceeds) Order 2000. The Anti-Corruption Bureau is the committee member of NAMLC.

- ***Work cooperatively to investigate and prosecute corruption offenses and to trace freeze, and recover the proceeds of corruption (Santiago Course of Action)***

Established since February 2007, Financial Intelligence and Enforcement Division (FIED) is the agency in Brunei Darussalam responsible for receiving, requesting, analysing and disseminating information concerning suspected proceeds of crime, money-laundering and terrorist financing. The role of FIED is to receive, analyse and store Suspicious Transactions Reports (STRs) and to disseminate them to the appropriate law enforcement agencies for investigation. The Financial Intelligence Unit acts as the secretariat for the National Committee on Anti Money Laundering and Terrorism Financing (NAMLC). Relevant legislations under this provision are the Anti-Money Laundering Act (Cap 209) and Criminal Conduct (Recovery of Proceeds) Order 2000. The Anti-Corruption Bureau is the committee member of NAMLC.

- ***Implement relevant provisions of UNCAC. These include:***
  - Art. 14 (Money laundering): Please refer to I.C.
  - Art 14(2): Section 27 of the Anti-Money Laundering (Cap 209) impose measures for the disclosure of information regarding movements of physical currency and bearer negotiable instruments into and out of Brunei Darussalam for the purpose of detecting, investigating and prosecuting any offence involving money0laundering and related offences made under any written law. The prescribed amount is BND$15,000 (or its equivalent in a foreign currency). Any person who contravene this section can be liable on conviction to a fine not exceeding BND$50,000, imprisonment for a term not exceeding 3 years or both.

o Art. 23 (Laundering of Proceeds of Crime)

The applicable provisions are in the Anti-Money Laundering Act (Cap 209), sections 5(9)(a), 21(1) and 22(1) and)Criminal Conduct (Recovery of Proceeds) Order, 2000 and section 7 of the Criminal Procedure Code (Cap 7).

o Art. 31 (Freezing, seizure and confiscation)

Some of the measures highlighted in the provision are covered by sections 5 and 6 of the Criminal Conduct (Recovery of Proceeds) Order, 2000. Section 5 of the Criminal Conduct (Recovery of Proceeds) Order provides for the possibility of requiring an offender to pay a certain amount as the Courts "thinks fit". The offender needs to be convicted and to have benefited from the offence. A benefit is to be considered as obtaining property. The Anti-Corruption Bureau has special powers of investigation to secure the proceeds of crime for the purposes of confiscation such as covered by sections 21, 23, 23A and 23B of the Prevention

of Corruption Act (Cap 131). Banking or any other professional secrecy seems not to be issue hindering the prosecution of corruption related offences.

o ***Art. 40 (Bank Secrecy)***
Section 23 of the Prevention of Corruption Act and Section 7 of the Criminal Procedure Code provide for the disclosure of account information by the manager of any bank irrespective of any written law to the contrary.

IV. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO PRIVATE SECTOR CORRUPTION:

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LEADERS' AND MINISTERS' COMMITMENTS

See below.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Santiago Commitment/COA: Fight both Public and Private Sector Corruption:

- ***Develop effective actions to fight all forms of bribery, taking into account the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or other relevant anticorruption conventions or initiatives.***

- ***Adopt and encourage measures to prevent corruption by improving accounting, inspecting, and auditing standards in both the public and private sectors in accordance with provisions of the UNCAC.***

- ***Support the recommendations of the APEC Business Advisory Council (ABAC) to operate their business affairs with the highest level of integrity and to implement effective anticorruption measures in their businesses, wherever they operate.***

V. ENHANCING REGIONAL COOPERATION

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LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Strengthen Cooperation Among APEC Member Economies to Combat Corruption and Ensure Transparency in the Region:

- Promote regional cooperation on extradition, mutual legal assistance and the recovery and return of proceeds of corruption.
- Afford one another the widest measure of mutual legal assistance, in investigations, prosecutions and judicial proceedings related to corruption and other offences covered by the UNCAC.
- Designate appropriate authorities in each economy, with comparable powers on fighting corruption, to include cooperation among judicial and law enforcement agencies and seek to establish a functioning regional network of such authorities.
- Sign bilateral and multilateral agreements that will provide for assistance and cooperation in areas covered by the UNCAC. (Santiago Course of Action) These include:
  - o Art. 44 – Extradition
  - o Art. 46 – Mutual Legal Assistance
  - o Art. 48 – Law Enforcement Cooperation
  - o Art. 54 -- Mechanisms for recovery of property through international cooperation in confiscation
  - o Art. 55 – International Cooperation for Purposes of Confiscation
- Work together and intensify actions to fight corruption and ensure transparency in APEC, especially by means of cooperation and the exchange of information, to promote implementation strategies for existing anticorruption and transparency commitments adopted by our governments, and to coordinate work across all relevant groups within APEC (e.g., SOM, ABAC, CTI, IPEG, LSIF, and SMEWG).
- Coordinate, where appropriate, with other anticorruption and transparency initiatives including the UNCAC, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, FATF, the ADB/OECD Anticorruption Action Plan for the Asia Pacific region, and Inter-American Convention Against Corruption.

• Recommend closer APEC cooperation, where appropriate, with the OECD including a joint APEC-OECD seminar on anticorruption, and similarly to explore joint partnerships, seminars, and workshops with the UN, ADB, OAS, the World Bank, ASEAN, and The World Bank, and other appropriate multilateral intergovernmental organizations.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

• ***Promote regional cooperation on extradition, mutual legal assistance and the recovery and return of proceeds of corruption.***
The relevant legislations are:
- o Brunei Darussalam's Extradition Order 2006 allows ad hoc extradition on a case-by-case basis.
- o Brunei Darussalam's Summonses and Warrants. (Special Provisions) Act, Cap. 155.
- o Mutual Assistance in Criminal Matters Order, 2005 (MACMO).
- o Brunei Darussalam's Criminal Conduct (Recovery of Proceeds) Order, 2000.
- o International Transfer of Prisoners Order, 2011.

• ***Afford one another the widest measure of mutual legal assistance, in investigations, prosecutions and judicial proceedings related to corruption and other offences covered by the UNCAC.***
• It is governed by Mutual Assistance in Criminal Matters Order, 2005 (MACMO). Based on MACMO, Brunei Darussalam may provide assistance in:
- Obtaining evidence;
- Taking written statements;
- Securing production orders;
- Obtaining attendance of persons in a foreign country;
- Custody of persons in transit;
- Search and seizure;
- Locating and identifying persons; and
- Arranging service of process.

• ***Designate appropriate authorities in each economy, with comparable powers on fighting corruption, to include cooperation among judicial and law enforcement agencies and seek to establish a functioning regional network of such authorities.***

• ***Sign bilateral and multilateral agreements that will provide for assistance and cooperation in areas covered by the UNCAC. (Santiago Course of Action) These include:***
- ***o Art. 44 – Extradition***
- ***o Art. 46 – Mutual Legal Assistance***
- ***o Art. 48 – Law Enforcement Cooperation***
- ***o Art. 54 -- Mechanisms for recovery of property through international cooperation in confiscation***
- ***o Art. 55 – International Cooperation for Purposes of Confiscation***

• ***Work together and intensify actions to fight corruption and ensure transparency in APEC, especially by means of cooperation and the exchange of information, to promote implementation strategies for existing anticorruption and transparency commitments adopted by our governments, and to coordinate work across all relevant groups within APEC (e.g., SOM, ABAC, CTI, IPEG, LSIF, and SMEWG).***

• ***Coordinate, where appropriate, with other anticorruption and transparency initiatives including the UNCAC, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, FATF, the ADB/OECD Anticorruption Action Plan for the Asia Pacific region, and Inter-American Convention Against Corruption.***

• ***Recommend closer APEC cooperation, where appropriate, with the OECD including a joint APEC-OECD seminar on anticorruption, and similarly to explore joint partnerships, seminars, and workshops with the UN, ADB, OAS, the World Bank, ASEAN, and The World Bank, and other appropriate multilateral intergovernmental organizations.***

VI. OTHER APEC ACT LEADERS' AND MINISTERS' COMMITMENTS

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LEADERS' AND MINISTERS' COMMITMENTS

• **2005:** Ministers encouraged all APEC member economies **to take all appropriate steps towards effective ratification and implementation, where appropriate, of the United Nations Convention against Corruption (UNCAC).** Ministers encouraged relevant APEC member economies to make the UNCAC a major priority. They urged all member economies to submit brief annual progress reports to the ACT Task Force on their APEC anti-corruption commitments, including a more concrete roadmap for ac-

celerating the implementation and tracking progress. (See Section I Above, UNCAC)

- **2006:** Ministers underscored their commitment **to prosecute acts of corruption, especially high-level corruption by holders of public office and those who corrupt them.** In this regard, Ministers commended the results of the Workshop on Denial of Safe Haven: Asset Recovery and Extradition held in Shanghai in April 2006. Ministers agreed to consider developing domestic actions, in accordance with member economy's legislation, to deny safe haven to corrupt individuals and those who corrupt them and prevent them from gaining access to the fruits of their corrupt activities in the financial systems, including by implementing effective controls to deny access by corrupt officials to the international financial systems.
- **2007:** We endorsed a model **Code of Conduct for Business, a model Code of Conduct Principles for Public Officials and complementary Anti-Corruption Principles for the Private and Public Sectors**. We encouraged all economies to implement these codes and welcomed agreement by Australia, Chile and Viet Nam to pilot the Code of Conduct for Business in their small and medium enterprise (SME) sectors. (AELM, AMM)
- **2008**: We commended efforts undertaken by member economies to develop comprehensive anti-corruption strategies including efforts to restore public trust, ensure government and market integrity. We are also committed **to dismantle transnational illicit networks and protect our economies against abuse of our financial system by corrupt individuals and organized criminal groups through financial intelligence and law enforcement cooperation related to corrupt payments and illicit financial flows**. We agreed to further strengthen international cooperation to combat corruption and money laundering in accordance with the Financial Action Task Force standards. International legal cooperation is essential in the prevention, investigation, prosecution and punishment of serious corruption and financial crimes as well as the recovery and return of proceeds of corruption. (AELM, AMM)
- **2009**: We welcome the Anti-Corruption and Transparency Experts' Task Force's Singapore **Declaration on Combating Corruption, Strengthening Governance and Enhancing Institutional Integrity, as well as the APEC Guidelines on Enhancing Governance and Anti-Corruption**. We encourage economies to implement measures to give practical effect to the Declaration and Guidelines. (AMM)
- **2010:** We agreed to leverage collective action **to combat corruption and illicit** trade by promoting clean government, fostering market integrity, and strengthening relevant judicial and law enforcement systems. We agreed to deepen our cooperation, especially in regard to discussions on achieving more durable and balanced global growth, increasing capacity building activities in key areas such as combating corruption and bribery, denying safe haven to corrupt officials, strengthening asset recovery efforts, and enhancing transparency in both public and private sectors. We encourage member economies, where applicable, **to ratify the UN Convention against Corruption and UN Convention against Transnational Organized Crime and to take measures to implement their provisions, in accordance with economies legal frameworks to dismantle corrupt and illicit networks across the Asia Pacific region. (AELM, AMM)**

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

- Brunei Darussalam ratified UNCAC on 2nd December 2008
- Brunei Darussalam acceded to the United Nations Convention against Transnational Organised Crime on 25th March 2008.
- The code of conducts for public officials is governed by the Public Service Commission Act (Chapter 83)
- To implement FATF Recommendation, National Committee on Anti Money Laundering and Terrorism Financing (NAMLC). was established in which the Financial Intelligence and Enforcement Division acts as Secretariat. The members of the NAMLC Committee are as follows:

1) Autoriti Monetari Brunei Darussalam
2) Anti-Corruption Bureau
3) Royal Customs and Excise Department
4) Attorney General's Chambers
5) Royal Brunei Police Force
6) Narcotics Control Bureau
7) Internal Security Department
8) Ministry of Foreign Affairs and Trade
9) Immigration and National Registration Department
10) Ministry of Home Affairs

ECONOMY: CHILE
CALENDAR YEAR: 2012
LAST UPDATED: May, 2012

LEADERS' AND MINISTERS' COMMITMENTS

2010: We agreed to enhance our efforts to improve transparency and eliminate corruption, including through regular reporting via ACT and other relevant fora on economies' progress in meeting APEC Leaders' commitments on anti-corruption and transparency.
2006: Ministers endorsed APEC 2006 key deliverables on Prosecuting Corruption, Strengthening Governance and Promoting Market Integrity and encouraged member economies to take actions to realize their commitments. Ministers also encouraged all economies to complete their progress reports on the implementation of ACT commitments by 2007. Ministers welcomed APEC efforts to conduct a stocktaking exercise of bilateral and regional arrangements on anti-corruption in cooperation with relevant international and regional organizations, and encouraged member economies to fully participate in the stocktaking activities.

Objective: Where appropriate, to self-assess progress against APEC Leaders' and Ministers' commitments on anti-corruption, transparency, and integrity and to identify capacity building needs to assist the ACT to identify priority areas for future cooperation.

EXECUTIVE SUMMARY

1. Summary of main achievements/progress in implementing the commitments of APEC Leaders and Ministers on anti-corruption, transparency, and integrity since 2004.

Chile has made significant efforts in the task of developing legislation, best practices and initiatives on anti-corruption, transparency and integrity, in a constant and progressive work which began at the end of the 20th century. In this regard it is worth indicating that, since the constitutional reform of 2005, the principles of probity or integrity and transparency are embodied in article 8º of the Political Constitution of the Republic.

As a part of the legislation that safeguards integrity in the performance of the public function, Law 20,088 was enacted in 2006, introducing to the Organic Constitutional Law of General Basis of the State Administration (Law N ° 18.575) provisions on the obligation of public officials on senior hierarchic levels, to present a Declaration of Assets besides the Declaration of Interests, which was already provided for in the Organic Law already mentioned.

Another significant development was the adoption of legislation concerning to the criminalization of bribery of foreign public officials and the jurisdiction of Chilean Courts thereon (Laws 30,341 and 20,371 respectively, both of the year 2009) and also on the penal liability of legal persons for the commission of that offence, among others (Law 20,393 of 2009)

With regard to the need to protect those who report acts of corruption, law 20,205 was enacted in 2007, which incorporated to the Administrative Statute a number of rules protecting public officials who report denounces in matters of corruption, to the competent authority.

As for transparency and access to the public information, it is worth mentioning the Law 20.285, in force since 2009, which puts into practice the principle of transparency throughout the State Administration, with a comprehensive approach, by establishing rules on active transparency, that is to say, information that public bodies must have permanently available to the public (primarily through the web site of the respective public organ, under the icon called Transparent Government), and by regulating the procedure for citizens to access to certain specific information that is not included in the active transparency. Besides it includes an action in order that citizens can claim if the respective State body denies information or does not answer the request. Also in this area it is worth noting that since September 2011 Chile is a party to the Open Government Partnership, an initiative aimed to promote the adoption of public policies on transparency, citizen participation, fight against corruption, citizen empowerment and e-government, in State members.

In the field of International instruments, it is important to mention that in 2006 Chile ratified the United Nations Convention against Corruption. Prior to 2004 our country had already ratified the Inter-American Convention Against Corruption and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, of the OECD.

2. Summary of forward work program to implement Leaders' and Ministers' commitments.

In this context it is relevant to mention some Bills currently being discussed in the National Congress, aimed at improving the rules on the following matters:
Access and performance of positions of the Public Senior Management (Alta Dirección Pública).
Probity in public office including matters referred to Declarations of Assets and Interests.
Transparency and access to public information.

3. Summary of capacity building needs and opportunities that would accelerate/ strengthen the implementation of APEC Leaders' and Ministers' commitments by your economy and in the region.

I. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO UNCAC PROVISIONS

LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Take All Appropriate Steps Towards Ratification of, or Accession to, and Implementation of the UNCAC:
Intensify our efforts to combat corruption and other unethical practices, strengthen a culture of transparency, ensure more efficient public management, and complete all appropriate steps to ratify or accede to, and implement the UNCAC.
Develop training and capacity building efforts to help on the effective implementation of the UNCAC's provisions for fighting corruption.
Work to strengthen international cooperation in preventing and combating corruption as called for in the UNCAC including extradition, mutual legal assistance, the recovery and return of proceeds of corruption.

I.A. Adopting Preventive Measures (Chapter II, Articles 5-13)

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RELEVANT UNCAC PROVISIONS

Chapter II, Articles 5-13 including:
Art. 5(2) Establish and promote effective practices aimed at the prevention of corruption.
Art. 7(1) Adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials that:
Are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;
Include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;
Promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;
Promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions.
Art. 7(4) Adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.
Art. 8(2) Endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.
Art. 8(5) Establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials. Art. 52(5)/(6) [sharing the information on the financial disclosures that should be in place]
Art. 10(b) Simplify administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities.
Art. 12(2)(b) Promote the development of standards and procedures designed to safeguard the integrity of private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State.
Art. 12(2)(c) Promote transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities.
Art. 13(1) Promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Art. 5(2):
Chile has had an active and permanent participation in the monitoring of the implementation of international Conventions against corruption. Chile has been evaluated in the implementation of the United Nations Convention against Corruption, the Inter-American Convention against Corruption and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organization for Economic Cooperation and Development (OECD). It is important to note that Chile became a member of the OECD on May 7th 2010, which implies a permanent monitoring of its anticorruption policies according to OECD standards.

Chilean Public Institutions issue an Annual Public Report, which besides being presented in an oral manner to the public, are uploaded to the respective institutional websites. Also due to the enactment of law 20,285 on access to the public information, the organs of the State Administration comply with the principle of transparency in public service - both in its active and passive form -, the procedures for exercising the right of access to information and its protection, and the exceptions to the disclosure of information. However, before the enactment of this legislation, some public services were already making public relevant information through their websites.

Among the Chilean public bodies that complies with the requirements of Art. 5 (2), **the Superintendence of Securities and Insurance** (SVS) can be mentioned. In general, the SVS regulations proposals are published on its website, during a period informed in each case, for receiving market and citizens comments. This procedure is applied since the signing of the Free Trade Agreement with the United States. Besides, the SVS has signed 26 Memoranda of Understanding with its counterparts in other countries and with international bodies such as IOSCO, COSRA, IAIS, ASSAL, to exchange information on offences included in the Securities Market Law. All the principles developed by these organizations promote the transparency of securities markets. SVS has signed 26 Memoranda of Understanding with its counterparts in other countries and with international bodies such as IOSCO, COSRA, IAIS, ASSAL, to exchange information on offences included in the Securities Market Law. All the principles developed by these organizations promote the transparency of securities markets.

Among the initiatives and good practices of **the National Civil Service Directorate (DNSC**) in the matter, it can be mentioned the development of a Handbook on Probity and Transparency, which is aimed at helping public officials to get acquainted with the rules on probity and transparency and to incorporate them in the exercise of their functions. It is an important tool in the training and induction processes in the State Administration.

DNSC has also implemented an Induction Program on Probity and Transparency. Its objective is to make known the basic elements of the State Administration, the rights and obligations, and budgetary administration to all those who perform functions within the Central Administration of the State, and also to enhance awareness on the importance of public functions from a State global perspective and its powers, particularly the executive branch, through which the President of the Republic accomplishes his functions and attributions. Therefore, the program seeks to give an approach to the concept of State, to its elements; to what is understood by Rule of Law; which are the functions of the State; which are the rules that govern it and which are its powers. This program has been developed in coordination with the Council for Transparency.

The Comptroller General's Office (CGR) has concluded several Cooperation Agreements with other State Agencies in order to develop joint actions in the fight against corruption, highlighting, among others, the Public Prosecutor's Office, the Judiciary, the State Defense Council and the Constitutional Court, forming the Anticorruption Front and developing joint actions. Likewise, the CGR has concluded several Cooperation Agreements with international institutions such as United Nations Development Program (UNDP), GIZ, and the Inter-American Development Bank aimed at strengthening the institutional tools which allow a better and timely anticorruption fight and the development of joint actions in this direction.

Since 2008, the CGR has developed an active exchange of experiences derived from local and global progress in implementing the United Nations Convention Against Corruption. The International Forum organized by the CGR with the support of the United Nations Development Program, gathers representatives of the most important national and international organizations – such as the International Organization of Supreme Audit Institutions (INTOSAI); the United Nations Office on Drugs and Crime; the International Anti-Corruption Academy (IACA), among others, for reflecting on the obligations assumed by States Parties to the Convention and on the implementation of its provisions. The first cycle of the Forum, initiated in 2008, was mainly focused on the challenges of implementing the Convention by individual countries, with special emphasis on our national experience

In the Forum conducted in 2009, besides listening to the presentations of the institutions which are part of anti-corruption coordinating agencies, such as the Judiciary, the Constitutional Court, the Public Prosecutor´s Office, the State Defense Council and the Comptroller General's Office, in the course of Forum, interesting contributions were presented, from the Academia, International Organizations such as the IDB and UNDP, and civil society, which raised innovative forms to measure this phenomenon in a more objective way than that made through the perception indicators currently used.

The "Third International Forum: The United Nations Convention against Corruption, Tools to Ensure Integrity in Disaster Situations", took place in 2011. The specific theme

was the prevention of corruption in disaster situations. For two days, participants discussed on the risks of corruption arising from disaster situations, and how the United Nations Convention against Corruption is an important guide for the prevention of irregularities in situations where emergency and the need of immediate action threaten the principles of probity and respect for the law. The debate was also held on the need to adjust and update the Chilean regulations in order not to hamper the relief work, adapting them to emergency situations where diligence is required to meet the needs of those affected by disaster. A presentation was made, on the Chilean experience, as a result of recent disasters – recalling the earthquake and the tsunami experienced on February 27th, 2010 – and talks were held on lessons learnt at a national and international level. Important authorities participated as speakers, among them, the Minister of Interior; the Comptroller General of the Republic; the UNDP Resident Representative, Mr. Benigno Rodríguez; the President of the INTOSAI Working Group on Accountability for an Audit of Disaster-related Aid, Mr. Gijs de Vries; and also the Comptrollers of Brazil, Colombia and Perú. Presentations were made also by representatives of the OECD, ISAID, PNUD, by the Chilean Undersecretaries of the Interior and of Telecommunications, and experts of the Ministries of Housing and of Public Works.

Within the annual training Programs of the CGR, courses on Administrative Probity for public officials are included.

CGR issues permanently administrative pronouncements and instructions on matters related to probity. As an example it can be mentioned the Public Letter 15,000 of 2012 giving instructions on the occasion of municipal elections to be held during the current year, which reiterates good practices aimed to preserve State and local patrimony and the correct action of public officials.

Furthermore it should be noted that the CGR chairs the Commission for Public Ethics, Administrative Probity and Transparency (CEPAT), of the Organization of Latin American and Caribbean Supreme Audit Institutions (OLACEFS)

Art. 7(1)

The general framework for establishing a civil service system in Chile is based in article 38 of the Political Constitution of the Republic, which provides that "An organic constitutional law shall determine the basic organization of the Public Administration, guarantee the public service career and the technical and professional principles in which it must be based and ensure equal access to public service, training and development of its members". This provision is complemented by article 19, Nº17 of the Constitution (included in the Chapter on constitutional guarantees) which reads: article 19º: The Constitution guarantees all persons: 17º Admission to all functions and public service employment, with no other requirements than those imposed by the Constitution and the laws.
The Constitutional Law referred to in the Constitution, is the Law 18,575 on General Basis of the State Administration (whose consolidated, coordinated and systematized text was established by Statutory Decree Nº 1/19,653 published in the Official Gazette on November 17th 2001). In reference to Article 7º, Nº 1 of UNCAC, this law contains a number of general provisions on the public function, and also those referred to general criteria related to the system of call, selection, recruiting, hiring, remuneration, retention, promotion and retirement of the civil servants.

Thus, in terms of general criteria, Article 13 establishes the observance of the principles of administrative probity and provides the obligation to exercise the public function with transparency. Article 15 identifies the criteria governing the statutory law on staff administration. Article 16, refers to the entry requirements including compliance with the principle of equality of conditions to apply for public employment through open competitions; the Article 17 establishes that the statute for public officials shall protect the dignity of the public function and to be in conformity with its technical, professional and hierarchical nature.

Finally, Article 18 provides that public officials are subject to administrative responsibility, without prejudice of civil and criminal liability arising from their actions, while Article 19 of the Law establishes a ban on developing any political activity within the Administration.

On the other hand, more specifically, Articles 43 to 51-Paragraph 2 of the Title II of the Law 18,575 which refers to the Public Service Career, establish the framework for the enactment of the Administrative Statute of public officials, particularly with regard to entry, rights and duties, administrative responsibility and the end of functions.

In this area it is important to note the establishment of public open competitions to select candidates for public offices, through technical and impartial procedures, that ensure an objective assessment of their skills and merits (Art. 44), the stability of the public employment and the specific grounds on which it may cease employment (Art. 46), the general principles relating to the performance assessment (Art. 47). Also, criteria is provided for establishing a system of training and development(art. 48), and for a system of salaries that encourages the exercise of certain functions while preserving the principle that equal payment will be assigned to similar conditions and responsibilities.

On December 1999, Law N ° 19.653, incorporated into the Bases Law an extensive Title III referred to the principle of administrative probity, which, according to the law,

"consists of observing an irreproachable official conduct and an honest and loyal performance of the function or position, giving preeminence to the general interest over the individual" (art. 52). This principle was raised to constitutional status, in article 8 ° Nº 1 of the Constitution, by Law Nº 20.050 which introduced several amendments to the Constitution of the Republic.

The specific rules governing the public service career are set forth in Law No. 18,834 which contains the Administrative Statute, whose consolidated, coordinated and systematized text was established through Statutory Decree No. 29 of 2004, of the Ministry of Finance, published in the Official Gazette on March 16th 2005; Law No. 19,882 (June 2003) called New Deal Labor, which established the Civil Service and created the Senior Public Management System and Law No. 19,553 on Modernization Assignment, regulating the payment of a portion of variable salary linked to the achievement of goals.

Some important aspects of the Administrative Statute are within its Article 3, letter f), which states that the public service career "... is a comprehensive system of public employment regulations, applicable to the plant personnel -, based on hierarchical, professional, and technical principles, which guarantee equal opportunities for entry, the dignity of the public function, training and promotion, stability of the employment, and objectivity in the performance evaluation based on merit and seniority. "Also, concerning to equal access to public employment, the Administrative Statute provides that it is prohibited "... any act of discrimination that results in exclusion or preference based on race, color, sex, age, marital status, association, religion, political opinion, national ancestry or social origin, which have the effect of nullifying or impairing equality of opportunities or treatment in employment (Art. 17 Nº 3 °) "

In reference to the provision of public employment it is important to mention the rules of Law No. 19,882 whose Senior Public Management System distinguishes between First and Second Hierarchical Level, guaranteeing a system of equal access to directive positions of public services in Chile; it establishes that the positions of heads of departments and those of equivalent hierarchical levels of ministries and public services, called of the Third Hierarchical Level, should be provided in a system of open competition, and stressed the meritorious nature of the administrative public career regulated by the Administrative Statute.

There are three hierarchies in the directive levels. The first two are called Senior Public Management positions. Its provision is under the responsibility of the Council of Senior Public Management, which is supported by the National Civil Service Directorate on the basis of objective rules that guarantee the realization of open public competitions, widely disseminated, for the provision of these positions on the basis of merit and suitability. Then there are the positions called of the Third Hierarchy Level, corresponding to Chiefs of Departments and other equivalents, which are also provided on the basis of open public competitions, widely disseminated, allowing equal access on the basis of merit and suitability. Finally, there are competitions for entering the plant, for promotion and "encasillamiento", based on Regulation No. 69 of 2004.

The Senior Public Management System (SADP) was created to professionalize the senior offices of the State. Its purpose is to attain that the highest responsibilities are exercised by the most competent and suitable persons, chosen through public and transparent competitions. The objective is to have a qualified and professional public management for implementing the public policies established by the government. It is a confidential and non discriminatory system, in which the priority is the search capabilities over other considerations. The senior directive public officials, whose positions are within the SADP, subscribe a performance agreement that serves the dual function of guiding and evaluating their performance. The agreement is signed with the direct superior and has a duration of three years. The agreement includes the annual strategic goals of performance and the objectives of the results to be achieved with its respective indicators, means of verification and basic assumptions in which the compliance is based. The senior level official shall inform his superior on the level of compliance of the goals and objectives, corresponding to the minister or the chief of service, as appropriate, to determine the degree of compliance of the agreed objectives.

Induction and strengthening program of Directive Officials whose offices are ascribed to the SADP. The incorporation of senior public managers to the State of Chile is accompanied with an induction program, which includes a set of policies and practices aimed mainly to receive, insert, and adapt adequately the persons designated to positions within the SADP who are entering the administration, and also for those that, while being already part of the administration, assume this type of positions. Among other efforts developed in this regard it can be highlighted the elaboration of the Induction Handbook, the development of capacity building activities (such as induction for senior public managers, seminars, regional workshops with a territorial approach, whose objective is focused on strengthening the attributes of Crisis Management and Contingency, implementing Seminars for Senior Public Managers in the macro regions of the country, North (Iquique), Centre (Santiago) and South (Puerto Montt); colloquiums on women's leadership, focusing on the analysis made by the Senior Public Managers on experiences in conciliating life and work for the directive management in the State; and the completion of a Diploma on Generic Directives Competences for the Senior Public Management with Universidad del Desarrollo, for a period of 5 ½ months and 126 chronological hours.

The SADP is expanding its presence into the area of local management and towards other Powers of the State. With regard to the former, it is currently being discussed in

the National Congress, a bill that establishes the System of Municipal Senior Public Management which introduces adjustments and modifications in various regulatory bodies in matters concerning to the municipal administration in order to update, refine and complement its provisions in aspects related to finance, control, transparency and probity, perfecting the role of the Council; creating positions in the plants that do not consider them and modifying a set of rules on municipal staff. Its foundations are the need to strengthen the decentralization of the country and, particularly, the local institutions through the promotion of transparency and probity at the municipal level and the convenience of providing Municipalities with the necessary human and material resources for the proper conduction of the tasks assigned to them by the law, in order to contribute to the municipal autonomy and enhance their quality as a driving force for development at the local level.

With regard to the second area of expansion of the SADP, the National Congress has just ended the discussion of a project creating the Environmental Courts as a part of the Judiciary. The Bill is ready to be promulgated by the President of the Republic and then published in the Official Gazette. The Senior Public Management Council, will have an essential role in the selection of the candidates for the positions of Ministers of these Courts, since the referred rule establishes that each Minister shall be appointed by the President of the Republic, with the consent of the Senate, from a list of five persons that, in each case, will be proposed by the Supreme Court. Each list in turn, will be made from a proposal developed by the Senior Public Management Council, in accordance with the established procedure for the appointment of Senior Public Managers of the First Hierarchical Level, and shall contain a minimum of six and a maximum of eight names for each position.

Besides the above mentioned, the National Congress and the National Civil Service Directorate have signed a collaboration agreement whose objective is the feedback and delivery of information on best practices in implementing and developing personnel selection processes aimed to provide the positions determined by the Senate. To that end, technical information will be provided by the DNSC that will ensure the quality of the processes, in accordance with the principles of transparency, non-discrimination and professional qualifications. In this regard relevant information will be shared and expert judgment will be provided in the matters related to the mentioned provision of positions.

Implementation of the SADP to the educational sphere. The Law Nº 20,501 on Quality and Equity in Education, among other regulations, incorporates the participation of the Senior Public Management Council in the Qualifying Commissions of public competitions for Directors of municipal educational institutions and Heads of Municipal Education Administration Departments, measure that involves diffusing the principles and components of the SADP to an essential area for the development of the country as it is the municipal education.

The State of Chile and good working practices. The will of the State has been reaffirmed, in its role as an employer, to promote policies and measures against discrimination tending to promote equality of opportunities and treatment for women and men who are employed in the public sector and thus, ensure equal opportunities for access and development in this area. In this sense, it has been reinforced the strengthening of the public institutions of the State that represent the central axis responsible for implementing public policies aimed to guarantee the fundamental rights under in Article 19º of the Constitution of the Republic, in particular the right to life and physical and mental integrity, provided for in the No. 1 of the mentioned provision.

In this context the role of the National Civil Service Directorate has been consolidated as the institution responsible for providing technical assistance for the management of the personnel of the State, in terms of promoting compliance of the Public Ethics standards and to safeguard and prevent attempts against the dignity and/or integrity of the people. In this way, the modernization of the State requires organizations with healthy working environments, based on the respect and good treatment, capable of delivering a suitable context for the normal exercise of the public function, which translates into better conditions for the deployment of optimal performances. In the framework of the above, mentioned, measures have been raised in the areas listed below, not only looking for full compliance with the rules governing public employment, but also looking to foster the development of various initiatives that ensure healthy work environments and stimulate the commitment of the staff with their service and the public function:

Recruitment and selection processes;
Career development and access to training;
Balanced or equal representation between men and women in positions of leadership and directive responsibility;
Working conditions;
Protection of maternity rights and parental responsibilities;
Conciliation of working responsibilities with family obligations, and,
Prevention and sanction of labour and sexual harassment in the workplace.

National and sectorial formative meetings with public officials in charge of Human Resources of the Civil Administration of the State's Institutions. The meetings on people´s management correspond to regular instances aimed at reflection, discussion, updating on new trends and approaches in people´s management, dissemination, capacity building, knowledge on management practices, and delivering of results in matters of

studies and others, in the framework of developing actions which promote professionalization and the increasing development of the Human Resources Unit (URH) of the Chilean Public Administration
It can also be mentioned that the production of documents with guidelines in the area of people's management in the Public Administration (among these, prevention of harassment; induction; assessment of staff performance) is a permanent work developed by the National Civil Service Directorate, in order to contribute in the professional development of public officials, thus increasing the standards of the public function in each of the areas addressed through these instruments

The Comptroller General's Office of the Republic (CGR) as the Supreme Control Organ must have highly qualified personnel. For this purpose its staff selection is made on the basis of the principles of efficiency, transparency and objective criteria such as merit, equity and aptitude. In fact, the entire personnel selection process is made through its web page (www.contraloria.cl), which includes a banner on recruiting personnel (Work with us), and at the same time, calls to participate are published in newspapers of national circulation; applicants participate freely in a process that is the same for all those who want to work in the CGR which includes interviews, tests, and background curriculum data evaluated by a Selection Committee other than the Comptroller General. At the same time an external firm to the Supreme Audit Institutions is requested to perform a job psychological assessment. All the above, with parameters of the highest efficiency.

At the same time CGR has a salary scale according with the required level of demand and provides a training process through internships and lectures to personnel entering and a system of continuous improvement of knowledge to officers who have more time in the institution

The CGR provides a rotation process for heads and staff members both from the central and regional offices, thus avoiding the creation of friendship ties with officials of the supervised Services, giving its personnel, at the same time, a comprehensive and cross institutional overview of its work.

CGR officials are ruled by the Administrative Statute and its Organic Constitutional Law. There is an schematic order of functions contained in its plant (www.contraloria.cl – banner Contraloría Transparente); staff rosters are made after an objective process of performance assessment; to access to higher positions there are promotions and regulated processes known by all; there is a competence-based training system enabling officials to acquire the skills required for acceding to superior positions.

The General Government Internal Auditing Council (CAIGG), in compliance of the government internal auditing policy, produced the Technical Document Nº 29, named "Framework Auditing Program for Administrative Probity", updated in 2010, whose purpose is to harmonize the auditing approach used in the review and control of the administrative probity in the Services of the State Administration. Specifically, It can be mentioned, that this Technical Document gives the Internal Audit Units an auditing framework program that enables auditing different processes such as: 1. "The Performance of the Public Function", whose main objective is the verification, by the Internal Auditor, that the execution of the public function is carried out with adherence to the obligations of public officials, and non-infringement of legal incompatibilities; 2. "Compliance with working time" whose main objective is the verification of the working hours compliance in a continuous form, according to the established schedule and execution of the position's work; 3. "Procurement Process", whose main objective is to verify whether a proper planning of the Service requirements has been done. Finally, the Internal Auditor shall verify in the audited Service whether there is a control environment aimed to prevent the execution of risk actions related to probity within the audited processes.

Art. 7(4)

One of the pillars of the Chilean institutional system is transparency and publicity of the acts of the Administration, embodied in the second paragraph of article 8 of the Constitution (http://www.leychile.cl/Navegar?idNorma=242302&buscar=Decreto+100+constituci%C3%B3n+pol%C3%ADtica). In addition, Law No. 20,285 establishes rules on access to public information and creates the Council for Transparency, which aims at promoting the transparency of public function, the supervision of compliance with the rules on transparency and disclosure of information by the organs of the State Administration and ensuring the right of access to information.

Law 20,285 (http://www.leychile.cl/Navegar?idNorma=276363&buscar=ley+20285) is intended to make operational, through the entire State Administration, the principle of transparency. It sets out rules on "active" transparency, i.e. information that public bodies should make permanently available to the citizens (mainly through the web site of the respective public body, under the icon "Transparent Government", which contains information relating to staffing, salaries, acts and resolutions, organizational structure of the respective institution, procurement, budget information, among other items). It also regulates the procedures for citizens to have access to some specific information that is not included in the "active transparency". In this case, the interested citizen must submit a request for information, which can be made directly through the institution's web site, or personally at their offices. The respective public institution has a time period of 20 working days (extendable to 30) to answer the request. In the event that the requested information is refused or is incomplete, this may lead to the submission of a claim by the applicant to the Council for Transparency (http://www.consejotranspar-

encia.cl/), an autonomous body - whose Directive Council is appointed with the participation of the Senate -, which is responsible for ensuring compliance with the Law of Transparency and Access to the information. The right of access to information is a key element in achieving a high degree of transparency in the exercise of public functions; it also facilitates a greater and more effective participation of citizens in public affairs.

Among examples of rules in the Chilean legal system that are inserted in the provisions of the UNCAC, it should be included Law 19,880 which establishes the Bases of the Administrative Procedures governing the acts of the administrative bodies of the State Administration (http://www.leychile.cl/Navegar?idNorma=210676&buscar=ley+19880). This law defines the concept of "administrative act" and establishes (and defines) the principles under which the administrative procedure is submitted, being the majority of them essential for the adequate protection of the Legal System against attempts or acts of corruption. Among them are those of "abstention" (as defined in article 12 of the referred law) and of "transparency" (as defined in article 16 of the law).

Another example of the importance that Chile assigns to the value of transparency and its capacity as a tool for the prevention of corruption, in its various manifestations, is the platform www.mercadopublico.cl that is part of the Public Procurement System established by the Law No. 19,886 (http://www.leychile.cl/Navegar?idNorma=213004&buscar=ley+19886) and in which all public bodies must upload the information of the purchases and contracts made by the administration. The platform is available to public access and does not require passwords to enter, so any citizen can check the transactions carried out by the 845 public bodies that trade in the system. In this way it can be accessed through the bidding tabs, visible for each one of the tender processes, the background detail of each of the bidding processes; it is shown, among other information, the terms of the tender bases with clear identification of the evaluation criteria, the questions and answers during the processes; the suppliers that offer; the amounts offered; the assessment records; allocation resolutions, and even technical bids sent by the suppliers, which today are mostly of public access.

In the context of the measures taken to comply with this provision of the UNCAC, it is important to mention that the Office of the Comptroller General of the Republic publishes all the public audit reports on the web page (www.contraloria.cl) except in the case of matters that, by the Constitution or the law, have been assigned a reserved nature, which aims precisely at giving transparency to its proceedings and to that of their supervised, allowing the citizenship to be fully aware of the observations made to the entities it controls. It should be noted that since the year 2007 the CGR has publicized in its web page every information concerning to its organization, granting free, expeditious and full access to its base of administrative jurisprudence, which contains thousands of pronouncements on the compliance of the regulations concerning or related to Public Administration, including, to a large extent, administrative pronouncements relating to the standards of probity, publicity and transparency, equality, conflicts of interest, etc. In the same line, since 2008, consistently and regularly, the Office of the Comptroller General publishes the full text of the final reports of ongoing audits of all the Administration, which are widely reviewed by the public, as it is evident from the high rates of access that the referred web page has recorded since it began such publications. It is also published and updated on a daily basis the working agenda and the meetings of the Comptroller General, the Deputy Comptroller General, the Heads of Division and the Regional Comptrollers, in order that the citizenship, the media and the authorities have broad access to information about such aspects

In regard to the prevention of conflicts of interests and the adequate patrimonial transparency of public authorities, Law No. 18,575, on General Basis of the State Administration (http://www.leychile.cl/Navegar?idNorma=191865&idVersion=2001-11-17), in its Title III (incorporated by Law No. 19,653, published on November 17th, 2001) regulates the issues of administrative probity, establishing in the art. 57 the obligation of a group of high-level authorities to submit a declaration of interests in the period of 30 days counted from the assumption of the position, as well as the obligation set forth in article 60 of the same law to submit a declaration of assets, which extends to the directors representing the State in certain companies where the latter is shareholder (art. 37 Law No. 18,046 on corporations, http://www.leychile.cl/Navegar?idNorma=29473&buscar=ley+18046).

Both declarations must be submitted to the Comptroller General of the Republic or to the Regional Controller concerned, as appropriate, who will keep them for reference (arts. 59 And 60 D Law No. 18,575).

On the other hand, one of the roles of the CGR is to make pronouncements on the existence of any ineligibility of civil servants, which is made through the control of legality of the appointments of public employees and the analysis, among others, of complaints. So does because of the preventive legality control and also during the auditing of plans, programs, projects, etc., possible conflicts of interest that might have both, staff and former staff members, are reviewed. Thus, as an example, it can be noted that, during the conduction of audits to staff members, it is monitored specifically that public officials that are required to present such statements have submitted them in a timely manner and, in the case of detecting any conflictive patrimonial situation or conflict of interest, it is verified whether the situation had or hasn't been informed in the respective declaration.

Also, as part of the initiatives and measures adopted in the context of compliance with the provision of N°4 of Article 7 of the UNCAC, it is pertinent to mention that Chile

joined the "Open Government Partnership" (OGP), on September of 2011. This initiative is a partnership agreement to promote the adoption of policies of transparency, citizen participation, the fight against corruption, citizen empowerment and e-government in each of the member States. On the occasion of acceding to this instance, the Government of Chile has promoted a series of activities with different actors in society, both at a national and international level involving the integration of the society in the initiative, which resulted in the submission of a Plan of Action, during the meeting held by OGP in the city of Brasilia, Brazil, on April 2012.

One of the most important activities was the completion of an on-line public consultation, in order to incorporate the perspectives and expectations of the different sectors of society in this task. This was carried out between December 23rd, 2011 and January 9th, 2012 and it allowed receiving views with respect to the first proposal for the Action Plan of the Government of Chile. A parallel consultation was added to the above mentioned process, with expert representatives of public agencies and civil society organizations.

The suggestions and opinions gathered in the framework of the query and the response to it were published on the website of the consultation and served as the basis for the reformulation of the Plan of Action. More information can be find in the link http://www.ogp.cl/

Art. 8(2):
Rules on the correct, honorable and proper performance of public functions, as it has been informed above, are contained in the constitutional framework, the Basis Law of the State Administration and the Administrative Statute. We refer to what has been mentioned with regard to Article 7.

Art. 8(5):
In reference to the compliance by Chile of this provision, it can be reproduced here what it has been informed on declarations of assets and interests, with regard to Article 7, Nº 4 of the UNCAC. Besides it can be mentioned that this provision is contained, as already stated, in paragraph 3 of the Title III of Law 18,575, which regulates the declaration of interest and assets of the public officials, regulation supplemented by Decree Nº 45 of 2006, of the Ministry General Secretariat of the Presidency (MINSEGPRES) (Regulations for the Patrimonial Declaration of Assets of the Law 20,088, http://www.leychile.cl/Navegar?idNorma=248305&buscar=declaracion+patrimonial+de+bienes) and by Decree Nº 99 of 2000, of MINSEGPRES (Regulations for the Declaration of Interests of Authorities and Public Officials of the State Administration http://www.leychile.cl/Navegar?idNorma=171504&buscar=declaracion+de+intereses).
In this matter and pursuant to an order issued by the Government, currently 205 public authorities, among which are the President of the Republic, his Cabinet and 150 Heads of Services, have published their declarations of assets and interests in the respective websites of their institutions.

Art. 10(b):

Under this provision of UNCAC it can be mentioned Law 19,880 on Basis for Administrative Procedures governing the acts of the State Administration, published on May 29th, 2003.

According to this Law the actions of the organs of the State Administration must be free of charge for those interested, unless a Law says otherwise; they should be done with celerity proceeding ex officio, where appropriate; they should be done under the principle of procedural economy avoiding delaying procedures; and must conform to the principle of transparency and publicity, allowing and promoting the knowledge, content and basis of the decisions adopted.

In this procedure, a number of rights are recognized to the persons in their relations with the Administration, such as knowing the status of processing procedures and obtaining copies and devolution of documents; identifying the authorities and the personnel at the service of the Administration under whose responsibility the procedures are managed; and exempt themselves of providing documents that do not correspond to the procedure or that are already in the possession of the Administration

The procedure under this Law establishes the principle of Administrative Silence under which after the legal term to resolve a request has expired without a pronouncement of the administrative body, the concerned party shall have the right to denounce this fact to the authority that had to resolve, requiring a decision on his application. If the authority does not answer in a 5 days term, the applicant's request shall be deemed accepted.

It is also relevant to mention Law Nº 20,500 published on February 16th,2011, on associations and citizen participation in public management, under which the State recognizes to the people their right to participate in its policies, plans, programs and actions. This law states that each organ of the State Administration should make public knowledge of the relevant information related to these matters.

Among other matters, the Law states that these bodies must give a participative annual account to the citizens on the management of their policies, plans, programs, actions and budget execution. In the event that observations are made to the account, they shall answer them.

It also states that these bodies should establish Civil Society Councils, with a consultative status, formed in a diverse, representative and pluralistic manner by members of nonprofit associations related to the competence of the respective body.

Law 20,285 on Access to Public Information - already mentioned in relation to Article 7, paragraph 4 of UNCAC - is intended to provide citizens access to public information. For this purpose it establishes rules on active transparency, i.e. information that public bodies should permanently have available to the citizens on their websites, and also regulates the right to access to public information through a procedure establishing grounds for reserve; time limit for deliver; procedures for complaints; notification to third parties and sanctions, among others.

As for initiatives and best practices related to this provision of UNCAC, it is relevant to mention, among others:

Agreement between the Council for Transparency and the Ministry General Secretariat of the Presidency (MINSEGPRES) signed on April 2011, by which they agreed to develop a collaborative work to develop the Website of Transparency of the State of Chile in order to facilitate the implementation of Law 20,285. Its objective is to provide a unique platform aimed to channel all requests of information, allowing both, tracking the responses to the requirements and also acquiring statistical information

Offices for Information, Complaints and Suggestions (OIRS). On October 16th, 1990, Decree Nº 680 of the Ministry of the Interior was issued, creating the OIRS, offices designed to assist people in their right to submit requests, suggestions or complaints to the State Administration. The OIRS shall inform people, among other matters, on the organization, competence and functioning of the organ, service or company; on the formalities of presentations or requests and to assist people having difficulties in the processing of their cases.

Presidential Instruction Nº 2, for citizen participation in public management, was issued on 2011. It establishes that in matters of citizen participation the Government's objectives are strengthening the civil society organizations, promoting and guiding actions for public participation improving efficacy, efficiency and effectiveness of public policies, improving and strengthening channels and spaces of information and opinion of the public, and promoting public oversight of the actions of public organs. In order to promote coordination in the implementation of Law 20,500 of citizen participation in public management, it instructs the Services for ensuring the establishment of formal and specific modalities of participation, aiming to accomplish participative public accounts, Councils of the Civil Society and citizen consultations.

This rule also promotes new forms of citizen participation for the term 2010-2014, seeking to strengthen relations between public institutions and citizens. These are: citizens' councils; digital participative platforms; participative dialogs; public management schools for social leaders; comprehensive system for information and citizen service; dissemination and systematization of information plan to feedback the service and compliance of the Law 20,285 on access to the public information.

Art. 12(2)(b):

Along with the rules contained in the Commercial Code, Law Nº 18,046 on Corporations, the Tax Code and similar Laws (Banks and Financial Institutions, Pension Fund Administrators, etc.,) there is a regulatory framework for Public Procurement contained in Law Nº 19,886 which creates a system for supplies and services to the State run by the Directorate for Public Procurement (Chilecompra)

Regarding public works concessions, it should be noted that they are regulated by Statutory Decree Nº 164 of 1991, of the Ministry of Public Works http://www.leychile.cl/Navegar?idNorma=16121&idVersion=1996-12-18).

It is important to note that after a long period of review and discussion, the Bar Association (Colegio de Abogados AG), a professional association, approved a new Code of Professional Ethics. The Code was presented on May 12th, 2011, in a ceremony attended by the President of the Order and the Minister of Justice. The document was prepared with contributions of academics, and it makes explicit reference to matters related to the regulation of conflict of interests. Its complete text can be found on the website of the Bar Association www.abogados.cl , section "Ethics and good practices".

In the last amendment made to Law Nº 18,046 on Corporations, under which the Securities and Insurance Superintendence (SVS) makes supervision, SVS promoted the incorporation of amendments to Article 44 and Title XVI aimed to prevent the realization of negotiations if there was a conflict of interest between the Company Administration and the shareholders of the same, thus promoting equitable negotiations among those to be audited, decreasing thereby information asymmetries that may occur, which could encourage the realization of corrupt acts. Article 44, above mentioned, provides in paragraph 3 the conflicts of interest of a Director: "It is understood that there is a Director's interest in all negotiation, act contract or transaction in which he should intervene, in any of the following situations: (i) himself, his spouse or his relatives up to the second degree of consanguinity of affinity; (ii) the societies or companies in which he is the director or the owner, directly or through other natural or legal persons, of a 10% or more of its capital; (iii) societies or companies in which any of the above mentioned persons is the director or owner, directly or indirectly, of the 10% or

more of its capital, and (iv) the controller of the society or his related persons, if the director had not been elected without the votes of that or those".

Art. 12(2)(c):
The rules governing the constitution of companies, establish as mandatory the publicity of a number of issues, including those of individualizing shareholders, and managers, whether for the general public knowledge (market transparency) or for tax purposes (obligations contained in the Tax Code and in the Income Law on identification of shareholders and partners) or for penal purposes, such as the framework governing the Financial Analysis Unit and the Internal Revenue Service and provisions on penal responsibility of legal persons.

In reference to the penal responsibility of legal persons, the General Government Internal Auditing Council (CAIGG) developed the Technical Guide Nº 46, linked with auditing instruments, to evaluate compliance of the Law Nº 20.393 (http://www.leychile.cl/Navegar?idNorma=1008668&buscar=ley+20393) on penal responsibility of legal persons in offences of money laundering, financing of terrorism and bribery, in the public enterprises, in order to collaborate in developing a model on crime prevention for those that have not implemented it. There are two central ideas in the production of this document, the first one linked to compliance, and its purpose is that the internal auditor evaluate whether the designed and implemented prevention model meets the legal requirements, at least those established by Law 20,393. The second orientation is referred to the rationale of the prevention model, in other words, if the model is adequate to the structure, size and nature of the business and if the scope of control (control environment, communication, monitoring, control activities, risk assessment) have embraced the issue and it is internalized.

Art. 13(1):
With regard to this provision of the UNCAC, it is pertinent to mention, what has already been informed on Law 20,500 and the Presidential Instructive Nº 2, in relation to Article 10 (b) of the UNCAC.
On transparency and access to the information, see the above mentioned on Article 7 Nº 4 of the UNCAC related to the constitutional principle of Transparency and Publicity of the acts of the Administration contained in Article 8 of the Political Constitution of the Republic, as well as regulatory standards contained in Law Nº 20,285 on Access to the Public Information, that establishes the procedures to accede to public information and the obligation to observe a behaviour of active transparency, making public – via website – all the information related to the structure, personnel, budget, public procurement, transfer of resources, acts and resolutions not affecting third parties, mechanisms of citizen participation, the results of auditing processes and other similar matters (Art. 7º).

The Council for Transparency, among other relevant functions, is the legally autonomous organ to recur in case of denial of access to public information. Its Resolutions are only appealable to the respective Court of Appeals.

On the other hand, law No. 19,628 on protection of personal data, establishes the procedure to access to this type of data, understood as "related to any information concerning individuals, identified or identifiable", and within them the so-called sensitive data, which are those "personal data that relate to the physical or moral characteristics of persons or to events or circumstances of their private life or privacy, such as personal habits, racial origin, ideologies and political opinions, beliefs or religious convictions, physical or psychical health condition and sex life"(art. 2° letters f and g). In general, such data can be treated or informed when the law, the owner of the data or a judge authorises to do so.

As already informed in relation to Article 7 (4) of the UNCAC, the Comptroller General's Office publishes in its website every information concerning to its organization; has granted free expeditious and full access to its administrative jurisprudence base; publishes the full text of the final reports of the ongoing audits of all the Administration, and publishes and updates, on a daily basis, the working agenda and the meetings of the Comptroller General, the Deputy Comptroller General, the Heads of Division and the Regional Comptrollers.
Recently a banner on accounting and budgetary information has been created on the web site of the CGR, related to the Municipalities, noting in colours (red, yellow and green) the degree of compliance with the delivery of that information to the Supervising Institution by the Municipalities of the country.

The web site Transparent Government Chile. (http://www.gobiernotransparentechile.cl). "Transparent Government" is an electronic gateway that facilitates the access to the Active Transparency information of the Government through a directory of institutions and a browser of information. This website collects all the Active Transparency information published by the services on their electronic sites, it is updated on a regular basis, and is presented to the citizenship in a single site and in the same format.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

It is important to reiterate here, what has been said in reference to Article 7, Nº 4 of the UNCAC, on the existence of a Bill currently in process in the Congress, on Probity in the Public Function, that among other issues addressed, includes modifying and perfecting the system of Declarations of Assets and Interest.

In this matter and pursuant to an order issued by the Government, currently 205 public authorities - among which are the President of the Republic, its Cabinet and 150 Heads of Services -, have published their Asset and Interests Declarations. The objective is to increase this figure in 207 more authorities, corresponding to the Regional Ministerial Secretaries.

I. B. Criminalization and Law Enforcement (Chapter III)

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RELEVANT UNCAC PROVISIONS

Art. 15 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.
Art. 16(1) Adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally,
the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage,
for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.
Art. 17 Adopt measures to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.
Art. 20 Adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.
Art. 21 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:
The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;
The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.
Art. 27(1) Adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Art. 15.
(a) Bribery of national public officials. Active bribery.
Bribery of national public officials is criminalized in article 250 of the Criminal Code, and is quite similar to the article contained in the Convention. In the bribery of national officials, the perpetrator is a private person, as stated in the relevant article, which reads: "he who" promises or consents to give a public official". The guiding verbs are "offer" and "consent", which may be assimilated to the three verbs used in the Convention, particularly as promises are considered to involve an offer. The protected legal right in this offence is a correct public administration and the material purpose thereof is that the perpetrator or a third party to obtain an undue economic advantage. The conduct required to materialize actions or omissions is described in articles 248, 248 bis and 249 of the Criminal Code, inserted herein:
Article 250, Criminal Code – "A person offering or consenting to give a public official an economic advantage to his benefit or that of a third party to perform an act or refrain from acting, as provided for in articles 248, 248 bis and 249, or for performing or having performed such act, shall be imposed the same fine and disqualification penalties as set for in such provisions.
In the case of an advantage offered for actions or omissions referred to in article 248, the briber shall be punished also with short-term imprisonment, minimum degree.
In the case of an advantage consented to or offered for actions or omissions referred to in article 248 bis, the briber shall also be punished with short-term imprisonment, medium degree – in the case of an advantage offered – or short-term imprisonment, minimum degree, in the case of an advantage consented to.
In the case of an advantage consented to or offered for a crime or offense referred to in article 249, the briber shall be also punished with short-term imprisonment, medium degree, if offered, and short term imprisonment, minimum to medium degree, if consented to. In such a case, should the briber be subject to a more stringent punishment for the crime or offense committed, the harsher penalty shall apply".
For the purposes of Title V, Criminal Code ("Crimes and offenses committed by public officials in the discharge of their duties"), Article 260 defines a public official as "any person discharging a public position or duty, whether in the central administration or semi-fiscal, municipal, autonomous institutions or companies or in agencies organized by or dependent upon the State, although the Head of the Republic has not appointed them and they do not receive a salary from the State. This will not be hindered by the fact that the servant has been appointed by public election." Additionally, according to jurisprudence, the concept of "public official" also includes ad honorem officials."

b. Bribery of national public officials: passive bribery.
The figure described by the Convention is criminalized generically in articles 248, 248 bis and 249, but more precisely in article 248 bis, according to which any economic benefit for oneself or a third party deriving from the omission or commission of an act proper to an official's duties is illegal.

Bribery, Article 248, Criminal Code. "A public official who solicits or accepts entitlements in excess of those proper to his/her position or an economic advantage for himself or herself or for a third party to carry out or for having carried out an act proper to his position which do not give rise to such entitlements […]

Bribery, Article 248 bis, Criminal Code. "A public official who solicits or accepts an economic advantage for himself or for a third party for refraining or having refrained from acting in relation to the performance of official duties or for carrying out or having carried out an act in violation of the duties proper to his office[…]
Should the violation of the duties proper to his office translate into the exertion of undue pressure on another public official to obtain from him a decision that may give rise to an advantage for a third party, a public official shall be punished with perpetual special or absolute disqualification from holding public offices or positions[…].

Bribery, Article 249, Criminal Code. "A public official that solicits or accepts to receive an economic advantage for himself/herself or for a third party to commit any of the offenses or crimes in this Title or in paragraph 4, Title III, […]
The provisions in the foregoing paragraph are without prejudice to the penalty applicable to the offense committed by the public official […]
Remarks made on bribery in the foregoing paragraph, particularly as regards economic benefits and intermediaries, are also applicable to this provision.

Article 16. (1) Bribery of foreign public officials and officials from public international agencies
Bribery of a public official is described in article 251 bis of the Criminal Code and has been adjusted to the standards required by OECD. The relevant provisions are as follows:
Article 251 bis.- "He who offers, promises or gives a foreign public official an economic or other advantage, for that official or a third person, to act or refrain from acting in order to obtain or retain - for him or a third party - any undue business or advantage in the field of international business transactions […] Should the advantage be non-economic, the fine shall range from one hundred to one thousand monthly tax units. The same punishment shall be imposed on he who offers, promises or gives the said advantage to a foreign public official for his having acted or refrained from acting, as stated above.

He who, under the circumstances described in the foregoing paragraph, has consented in giving said advantage shall be punished with short-term imprisonment, minimum to medium degree, as well as the fine and disqualification referred to above."
Article 251 ter.- "For the purposes of the foregoing article, "foreign public official" means any person holding a legislative, administrative or judicial office in a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organization."

Article 17. Embezzlement, misappropriation of funds and other ways of public property diversion by a public official.
Chilean laws include penalties for the perpetrators of the offense of embezzlement, under the terms of the Convention, particularly in articles 233, 234, 235 and 236 of the Criminal Code.
Article 233. "A public official who, having custody of public or private persons' monies or effects in deposit, consignment or attachment, embezzles said monies or consents to their embezzlement by another individual [...]
Article 234. "A public official who, due to inexcusable negligence or breach of duty, gives a third person an opportunity to embezzle public or private monies and trade effects referred to in the above three numbers [...]
Article 235. "A public official who, to the detriment or hindrance of a public service, applies the monies or effects under his custody for his own benefit or that of third parties [...]
Article 236. A public official who arbitrarily gives the monies or trade effects under his administration a use other than the one intended [...]

Article 20. Unjust enrichment
Law No. 20,088 provides that authorities holding a public position are bound to make a statement indicating their net worth. Unjust enrichment was incorporated into the Criminal Code, particularly in article 241 bis.
Criminal Code, Article 241bis. "A public official who, in the exercise of his duties, significantly and unreasonably increases his net worth, shall be punished with the amount of the increase and imposed the penalty of absolute provisional disqualification from holding public positions and duties, in its minimum to medium degree.
The provisions in the foregoing paragraph will not apply if the originating conduct is, for itself, any of the crimes described under this Title, in which case the penalties assigned to the relevant crime will be imposed.
The Prosecutor's Office shall always have the burden of proof referred to herein.
Should the criminal action be initiated by a complaint or action and the public official is acquitted of the crime herein or if the action is dismissed with prejudice for any of the reasons in letters (a) or (b), article 250, of the Criminal Procedure Code, the public official shall be entitled to compensation by the complainant or accuser against any damages, both material and moral, sustained, without prejudice to the criminal liability of the complainant or accuser for the crime in section 211 of this Code."
In Chile, statements by employees (statement of property and income) are public and controlled by the Comptroller's General Office.

Article 21. Bribery in the private sector
The relevant laws include articles 467 – 471, 473 of the Criminal Code and Law No. 18,933. Not all conducts amounting to private bribery are covered by the several kinds of frauds and swindles. Likewise, the stages prior to bribery – i.e. promise and offering – may only be included within the "attempt to", their eventual punishment depending upon jurisprudence. In view of the above and recalling that, as it is not expressly criminalized in Chile, there is no possibility that criminal investigation and public criminal prosecution mechanisms may set or include specific criteria within such sphere.
Chile has raised the need of technical assistance in the form of a model set of laws, as it may be reasonable to be provided with examples of laws summarizing experiences by other States in implementing this matter.

Article 27. Participation and attempt
The Chilean Criminal Code broadly punishes various forms of participation in an offense, be it as principal offender, co-perpetrator, instigator, accomplice or accessory.
In Chile, not only the principal offender or perpetrator of a crime is punished (Article 15, No. 1, of the Criminal Code), but also those who assist him by providing the means to commit the crime or those who witness it - without playing an active role – and do not prevent its commission (Article 15, No. 3, Criminal Code). Our Criminal Code treats the individuals in the latter case as perpetrators, they being imposed the same punishment as the principal offender under article 15 of the Code - although according to doctrine it is arguable whether they can be labeled as accomplices.
Those inducing or instigating a crime are punished according to article 15, No. 2, of the Criminal Code. Complicity is widely covered by the Chilean laws (Article 16 of the Criminal Code), thus allowing to punish anyone who cannot be held as a principal offender, to the extent he/she cooperates with the execution of the offense, either before or concurrently with its commission. If acting after its execution, the punishment is imposed under article 17 of the Criminal Code as an accessory after the fact.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

The Public Prosecutor's Office has raised the need to train its prosecutors on the recovery of the proceeds of corruption. To such end, it has been interacting with the World Bank and UNODC. From May 23 to 25, a Workshop shall be carried out on the recovery of corruption proceeds, funded by the World Bank, which will be attended by sixty Chilean prosecutors.

Chile – in conjunction with Thailand - has promoted a multiannual project to design a model applicable to the whole region with a view to criminally prosecuting corruption and money laundering offenses using investigation and financial intelligence techniques. This model will allow APEC economies to increase their effectiveness in criminal investigation and prosecution of corruption and money laundering cases, and will be enhanced by the publication of a manual depicting the best identified practices. Should the project be approved, it will be implemented between mid 2012 and early 2015.

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

Chile has raised the need for technical assistance in the form of a model set of laws on private corruption as it could be appropriate to be provided with examples of laws summarizing other States' experiences in the implementation of this matter.

I.C. Preventing Money-Laundering

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RELEVANT UNCAC PROVISIONS

Art. 14(1) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons, that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering.

Art. 14(2) Implement feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders.

Art. 14(3) Implement appropriate and feasible measures to require financial institutions, including money remitters, to:

(a) include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;
(b) maintain such information throughout the payment chain; and
(c) apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Article 14.

Measures to prevent money laundering.

14.1.a

According to Law 19,913 and its subsequent amendments , there are a number of sectors in Chile that develop financial and non-financial activities, which, within the preventive Money Laundering System are considered as obliged subjects, who must apply in their operational processes the measures established in sectorial regulations in order to comply with the Due Diligence with Customers (DDC), allowing for its proper identification, the grounds for its operations, the maintenance of adequate records on the customer's identification and the history of its operations, among others. At the same time, the law establishes the obligation to notify the Financial Analysis Unit of suspicious operations by submitting a Suspicious Transaction Report, as provided for in Article 3 of the Law 19,913.

Specific Rules by Sector

Banking institutions

Chapter 1-14 on "Prevention of Money Laundering and the Financing of Terrorism" of the Updated Compilation of Rules (RAN) of the Banking and Financial Institutions Superintendence (SBIF).

The knowledge of the customer begins from the moment when, by reason of an operation, he is linked to the bank. Therefore, the bank requires the development of policies and procedures of acceptance and identification, which must consider, among other factors, the background of the customer; activity profiles; amount and origin of the funds involved; the country of origin of the funds and whether the country complies with the minimum standards of acceptance required; and its corporate relations or other indicators of risk.
For the cases of non-routine transactions or in the case of occasional customers or politically exposed persons at the international level, the bank shall require a statement on the origin of the funds when an operation exceeds the lower threshold, between that defined by Law No. 19,913, which creates the Financial Analysis Unit (UAF), or the one internally regulated. This declaration shall be accompanied by documentation sustaining it. Special attention should be given to identify the sender and the recipient in the case of the transfer of funds.

Savings and Credit Cooperatives

Savings and Credit Cooperatives are under the supervision of the Banking and Financial Institutions Superintendence (SBIF), and are regulated by Circular Letter No. 123, of the SBIF. This circular letter provides that the knowledge of the customer begins from the moment when, by reason of requesting its incorporation as a partner or asks for a transaction, the customer is linked to the entity. Therefore, the Cooperative requires the development of policies and procedures of acceptance and identification, which must take into account, among other factors: The background of the applicant (ID number, address, telephone number, powers of attorney when representing a third party, deeds when appropriate, etc.); the activity it develops; and amount of the transaction (declaration of origin of the funds involved must be solicited, accompanying documentation that sustain it, when the amount of the operation exceeds the lower threshold between that defined by Law No. 19,913 and the one regulated internally). The cooperative shall maintain the background information of their customers updated, in the course of the relationship.
On the other hand, the Financial Analysis Unit issued Circular Letter No. 22 dated June 21 2007, which provides measures in the field of customer knowledge for those cooperatives that are not in the scope of supervision of the SBIF, resulting complementary to these.
Title II in numeral 5 on "Control procedures for the detection, monitoring and reporting of unusual operations", Circular No. 123 on Savings and Credit Cooperatives, establishes: "once a suspicious operation is identified, the cooperative is obliged to report such an operation to the Financial Analysis Unit (UAF) ".

Filial companies of leasing and filial companies of factoring

For these bank subsidiaries, that are under the supervision of the SBIF, the rules provide that they must establish a system for prevention of money laundering and financing of terrorism, for which they must comply with the provisions applicable to its headquarter bank, laid down in chapter 1-14 of the updated compilation of rules (RAN).
Circular Letter No. 36 for filial leasing companies and N° 18 filial factoring companies, in its Title V and numeral 8 respectively stipulate that "they shall constitute a system for prevention of money laundering and terrorist financing". They have the obligation to report to the Financial Analysis Unit of any operation that, in the exercise of that activity, is suspicious under the terms of the law.
In the case of companies that carry out this activity and are not banking subsidiaries, the UAF has issued Circular Letter No. 20 (factoring) and No. 21 (leasing) dated June 14, 2007, concerning to customer knowledge.

Credit Card Issuers and Operators

The UAF issued Circular Letter No. 32 dated September 7, 2007, which provides that the knowledge of the customer begins from the moment that, by reason of the request of an operation or a product, a natural or legal person is linked to a credit card issuing company or to a credit card operating company, and until the contractual relationship is completely finished. As a result, they require the development of policies and procedures for identification of customers, both, for its acceptance and maintenance.
Circular Letter No. 17 for credit card issuers and operators, in numeral 20.4 on "Information to the Financial Analysis Unit", establishes that they must inform to the Financial Analysis Unit of any operation that, in the exercise of their activity results suspicious, according to the terms of the law.

Securities intermediaries

The securities intermediaries are responsible for the identity and legal capacity of the persons contracting through them, the registration of the most recent titular holder in the issuer records, and the authenticity of the last endorsement.
The General Rule No. 12 of 1982 specifies that the securities intermediaries should

require of their clients, either natural or legal persons, all the relevant information in the field of identification.
In addition, the customer's relationship with the intermediary must be set on record; this is, if the customer is a shareholder of the intermediary or if the intermediary is shareholder or partner of the customer (legal person). In addition, it should be left on record the type of orders that the intermediary may receive from the client (written orders, verbal orders with or without confirmation from the customer, or by any other mechanical or electronic means that is clearly identified in the Card)."
All that information shall be contained in a document called Customer Card that must be signed by the customer or its legal representative, in which case the representative must attest the veracity of the information. Stock exchanges and intermediaries are also authorized to require any additional information that they determine as necessary. By Circular Letters Nº 30 and Nº 31, dated August 16, 2007, the Financial Analysis Unit, regulated in matter of customer knowledge on these agents.

Security Deposit Company

Deposit companies do not have accounts with natural persons, but only with entities such as financial intermediaries, managers of third-party funds and other entities, from whom they require the records relating to their identification and legal constitution. The identification of the final beneficiary of the deposited values corresponds to the securities intermediaries, entities through which persons and agencies operate, other than those authorized to make deposits into these companies.

Third-party Funds Administering Societies

For all the Administering Societies of third-party funds (Mutual Funds, Investment and Savings for Housing) the final paragraph of article 161 of the Securities Market Law, No. 18,045 provides the duty of the external auditors to inform on the internal control systems in order to ensure compliance with the prohibitions of Article 16, as well as on information and file systems, to record the origin, destination and opportunity of the transactions done with the resources of each fund. For its part, the UAF issued Circular Letters Nº 26, 27 and 28 related to the funds collection in knowledge of the customer.

Mutual Fund Administrators

The Administering society must keep a Registry of Members, enabling their identification, according to the background information required to the investor at the time of materializing the contribution. The transfer of mutual funds quotas must be carried out by means of a transfer that should identify the parties and the surrendered quotas, subscribed in the presence of two witnesses, a securities intermediary or a notary public.

Also, if the placements of contributions are paid through intermediaries of values, they must maintain an adequate identification of the constituents.

Investment Funds

Within 6 months from the adoption of the internal rules of procedure, funds must have at least 50 contributors, or at least one institutional, provision that requires knowing who the contributors are.
The Administering society must keep updated in its registered office a list with the name, address and number of quotas of each of the contributors, for each of the funds that it manages. In the same way it must keep a Registry of Contributors, under the responsibility of the manager, with indication of the name, address, national identity card or RUT, number of quotas and date of registration in the name of the contributor. Subscription Contracts of quota must individualize the contributor by its name, amount of the contribution and form of payment. Also, the registration of the transfers must be issued without further conditionality than the fulfillment of the legal requirements, that is, identification of the contributor in the subscription agreement or transfer and prevent that a same investor, not institutional, control more than 35% of the quotas in the fund.
Finally, the titles (documents) expressing the quotas owned by the holders must contain identical individualization of the contributors as the one already expressed.

Housing Leasing

The contributions into these types of funds shall be implemented through the signing of a contract, which should indicate at least the nature of the account, name, ID card of national identity number, date of birth, address, marital status, marital regime, name of the fund in which the investment is to be made. In the case of transfers of quotas it must indicate the name and number of the national identity card. In addition, the administrator must keep a record indicating name, national identity card number, address, number of the savings account, name of the fund in which the investment is made, number of quotas, amount of the investment. Similar information must be sent to the contributors.

Insurance companies

Notwithstanding they are included in the rules issued by the Securities and Insurance Superintendence (Circular Letter 1809) the Financial Analysis Unit, through Circular Letter No. 29 of August 16, 2007, also regulates its operations. In this sense it provided that the knowledge of the customer begins from the moment in which, by the request of an operation or a product, a natural or legal person is linked to an insurance com-

pany. As a result, they require the development of policies and procedures for identification of customers, both for their acceptance as for their maintenance.

Insurance Brokers

They must verify the identity of the insured persons, the existence and location of the insured goods, to give to the company the information they have on the proposed risk and send to the company premiums and documents received for the insurance policies that they mediate.
To perform their activity, insurance brokers must register on the Register kept by the Superintendence to the effect, and meet the requirements of the regulations in force.
In accordance with the General Law of Banking, subject to the rules of the Superintendence, subsidiaries of banks or financial entities are allowed to engage in the activity of insurance brokerage, excluding pension funds insurance.

Pension Fund Managers

The transactions performed by the Pension Funds Administrators (AFP) with their customers (affiliated), may have a dual nature, on the one hand quotations or mandatory legal deposits and on the other, the possibility they have to make deposits and withdrawals on a voluntary basis, operations that represent a very dissimilar risk level to be an instrument for money laundering. For this reason, the UAF issued Circular No. 36 of December 28, 2007, providing instructions for customer knowledge on the operations of voluntary nature, performed on a regular or occasional basis.
In the same way, Circular Letter No. 1,480 of a joint character, between the Pension Funds Administrators Superintendence and the Financial Analysis Unit, which obliges the Pension Funds Administrators, among others, to develop risk profiles of its affiliates, so that a consistency can be established between the voluntary deposits, withdrawals and mandatory contributions with the sole and exclusive purpose of financing a pension. Without prejudice to the foregoing and as noted in the preceding paragraph, the Pension Funds Administrators have records and history of each of those affiliated to the Pensions System, which allows us to conclude that there is due knowledge of the customer.

Financial Analysis Unit (UAF)

The UAF issued Circular Letter No. 18 for the currency exchange offices, money transfer companies, and securities and money transport companies. This Circular Letter provides for the mandatory compliance by these institutions of the Due Diligence with Customers.
The obligations that in this regard are established for the above-mentioned obliged subjects are oriented to the following guidelines:
a) Require and register for each operation made in cash or any type of document, exceeding US$ 5,000 (five thousand dollars of the United States of North America) or its equivalent in other currencies, data relating to the identification of the customer who performs the operation, and in addition, to request a statement mentioning the origin and/or destination of the funds. Complementing the above, it is also instructed on the conservation of the information collected and its background, for at least five years.
b) To have a manual establishing the policies and procedures necessaries to avoid involvement in operations related to money laundering, detailing the minimum information that the document must contain.
c) Likewise, paragraph 1 of numeral 2 of the UAF Circular Letter No. 0018, for currency exchange offices; money transfer companies, and securities and money transport companies, provides that in case of detecting suspicious transactions, they should report to the Financial Analysis Unit.

14.1.b
Law No. 19,913, published in the Official Gazette on December 18, 2003, created the Financial Analysis Unit, with the tasks of receiving reports of events, transactions and suspicious operations of money laundering and financing of terrorism performed by institutions of the financial system and other obliged subjects; analyse these reports and, where appropriate, refer them to the Public Prosecutor's Office. It is established that the UAF may also recommend measures to the public and private sectors to prevent the commission of the offence of money laundering as well as imparting instructions of general application to the subjects obliged to inform.
With the enactment of Law No. 20,393, a system of penal liability of legal persons has been established with regard to the offences of money laundering, terrorist financing and bribery to public officials.

From the year 2010, the Financial Analysis Unit (UAF) has been appointed the official representative of the country to the GAFISUD and the coordinator agency at the national level for the prevention and combat of the money laundering and the financing of terrorism (ML/FT).
Accordingly, the main policy of Chile is to strengthen the National System of Prevention of Money Laundering and Financing of Terrorism, considering for its achievement the following priority objectives:

i. Carry out, from the Financial Analysis Unit, a national and international technical coordination for the prevention and combat of the money laundering and the financing of terrorism (ML/FT) through the establishment - when they do not exist, or the strengthening, when they have been previously identified, of the instances of interagency coordination, that are necessary between government and autonomous agen-

cies of the State that play a role in the prevention and combat of ML/FT.
ii. Increase international cooperation between Chile and other countries, through the promotion of information exchange between the Financial Analysis Unit and the financial intelligence units of the other countries as well as between regulatory and supervising agencies of Chilean and foreign homologous economic sectors.
iii. Promote public-private cooperation in the field of prevention and combat of ML/FT, considering the implementation of agreements of cooperation between professional associations of the private sector and the State of Chile.
iv. Promote the generation and implementation of the legislative amendments that are necessary for Chile to meet the international standards in force.
v. Supervise at the national level, the compliance with the laws and regulations for the prevention of ML/FT which are in force, considering the effective observance by the organs of government and autonomous agencies of the State of those goals and objectives established institutionally for the prevention of ML/FT.
vi. Begin the auditing of the obliged subjects of the economic sectors that lack of a specialized regulatory agency, in accordance with the monitoring system based on risk, developed with the technical assistance of the International Monetary Fund (IMF); and promote through agreements of inter institutional cooperation the coordinated control of the sectors that have specialized regulatory agencies.
vii. Apply international standards in the exercise of the active transparency to promote compliance with the laws and regulations, especially in regard to the evolution of the statistics associated with the levels of compliance in prevention and combat of money laundering and financing of terrorism, and the results of the auditing of obliges subjects.
viii. Continue with the training on the current regulations of the subjects obliged to report suspicious transactions, cash transactions, and statements of carrying and transportation of cash.
ix. Participate on a stable manner in all international forums with the objective of the timely implementation of normative criteria associated with the agreements adopted, and also to establish the legal amendments that are necessary to update and improve the National System of Prevention of Money Laundering and Financing of Terrorism in Chile.

14.2

The control of the physical cross-border transportation of cash and bearer negotiable instruments is regulated in article 4 of law 19,913, in the wording given by law 20,119. This is a system of "declaration" at the entrance, for which all the people who cross the border, carrying cash or bearer negotiable instruments must submit a document to the designated authority, on request.
At the departure of the country a system of "revelation" is applied, to the people who carry or bear foreign currency over US$ 10,000 for which they must complete and submit to the Customs Office a document established for the effect.
The statements of money demand to indicate the origin of the money or instruments. In the event that this requirement is not met, the Customs Office may require that such information is supplied. If a false declaration or non-declaration is detected, the Customs Office demands to fill out a "non-voluntary declaration", which contains the information about the origin of the money or instruments that is immediately forwarded to the UAF for its processing and application of sanctions.
Law 20,119 established as less serious sanctions the contraventions to the provisions of article 4 of the Law 19,913 that obliges to declare the carrying of cash currency from or towards the country, which can be penalized with a fine up to three thousand Unidades de fomento (approximately US$100,000), not exceeding 30% of the amount involved.
In the case of a false declaration or inconsistencies in the declaration, the Customs Service is empowered to denounce the situation to the Public Prosecutor' Office, which after the respective investigation shall submit the case to the Guarantee Judge. It is also possible that precautionary measures are adopted with respect to the funds and ultimately, in the case of a condemnatory sentence, they can be confiscated.

14.3
Banks

Numeral 2 of Chapter 1-14 of the Updated Compilation of Rules (RAN), on "know your customer" states that in the case of transfers of funds, the originator and the beneficiary must be identified.
In addition, Circular Letter 0010 of the Financial Analysis Unit, on Electronic Funds Transfers, provides that: For all electronic funds transfers, the sender institutions must obtain and retain for a minimum period of five years, at least the following information concerning to the originator of the transfer, also verifying that the information is accurate:
- Amount and date of the transfer
- Name of the originator
- National Identity Card Number for Chileans or residents foreigners, or Passport Number or similar document of identification for non-resident foreigners.
- Originator's account number (or, in its absence, the reference number assigned to the operation).
- Address of the originator

Also, in Chapter 2-2 of the RAN it is established that institutions should have the appropriate technological tools that allow them to develop alert systems, for the purpose of identifying and detecting unusual operations. These instruments must be able to monitor all transactions carried out by their clients through the various products, paying special attention to those that are carried out in cash. The parameters for detecting unusual transactions will consider in its application the risk of customers and/or products.

Additionally, Circular Letter 0010 of the Financial Analysis Unit above mentioned, establishes that the institutions that receive electronic transfers must adopt effective procedures based on risk, to isolate and manage transfers that are not accompanied by complete information about the originator. The lack of complete information of the originator can be considered as a factor for assessing whether an electronic transfer or the transactions related to it are suspicious and, accordingly, should be reported to the UAF.

When required, the institution receiving the electronic transfer should consider restricting or even ending its business relationship with the sender institution that fails to comply with the procedures. They should also refrain from processing transfers when the originator requesting them does not deliver the minimum information.
In addition, the specific obligation to save the documentation relating to the transfer when the financial institution acts as an intermediary is reflected in article 155 of the General Banking Law, which requires the documentation of the financial institution to be preserved for a period of six years.

Currency Exchange Offices and Money Transfer Companies monitored by the UAF
Circular Letter 0010 of the Financial Analysis Unit is applied on Electronic Funds Transfers, in the same terms and conditions set forth in the preceding paragraph.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

There are a number of proposed amendments to Law No. 19,913 which are in part incorporated in the Bill (Bulletin 4426-07), currently in its second procedural stage in the Senate, which contains:
- Rules that complement the powers of the UAF and the Public Prosecutor's Office, in regard to the analysis of information related to money laundering and criminal prosecution of those who perform it.
- Adequacy of the criminal type of money laundering, adjusts the listing of base offences, and generates a clear and expeditious procedure that allows the retention and preventive freezing of funds associated with terrorist activities.

Among other amendments the Bill proposes the following:

Modifications of the powers of the UAF
It incorporates rules that expressly empower the UAF to examine and analyze suspicious transactions that could be linked to the financing of terrorism, and it gives the UAF new powers related to the obliged persons.

It incorporates, within its scope of control and monitoring, new subjects obliged to report suspicious transactions, such as for example, the stock exchanges and commodity exchanges that can be or are linked to financial activities, the professional sports organizations referred to in Law No. 20,019, the Savings and Credit Cooperatives, as well as the representations of foreign banks and other financial entities and finally to public services and agencies.
Law No. 19,913 is modified in matter of access to information subject to bank reserve, so that the UAF and the Public Prosecutor's Office can access it without prior judicial authorization, since they are public agencies that have the necessary legitimacy to request this information, in accordance with the provisions of Article 154 of the General Banking Law.

Modifications of the powers of the Public Prosecutor's Office
The project proposes that prosecutors have the power to access the current bank accounts and all information that is relevant, when investigating financial transactions related to this type of offence, since this is an integral part of a good system of detection and prevention of money laundering
The project also proposes new faculties for the Public Prosecutor's Office in relation to the lifting of the banking secrecy, by amending the Law on current accounts and the General Banking Law, allowing a proper system of prevention and detection of money laundering and terrorist financing.

c. Investigations of money laundering
In order to protect and better tackle the success of investigations on Money Laundering, the Bill proposes the following modifications:
In reference to the criminal type of money laundering, the Bill proposes changes in the following aspects:
- The list of base offenses of money laundering, are adapted and perfected;
- Special rules are established for the application of the penalty, when the penalty for money laundering is greater than the one the judge can apply for the base offense under investigation;
- extends the secrecy of the investigation not only to the offences of money laundering and illicit association to money laundering, but also to all those referred to in Law 19,913 ;
- It regulates in a better manner the provisional file by prosecutors and;
- A new criminal type of omission to report is created that follows the criminal type already in Law No. 20,000

d. Other proposed modifications
- With respect to the financing of terrorism, the Bill proposes an administrative procedure with judicial ratification, of the preventive retention of assets, exercised

by the Financial Analysis Unit, complying with the resolutions of the United Nations Security Council, which enables strengthening the preventive work, both in the field of money laundering and in the financing of terrorism.

- Empowers the National Customs Service to apply fines when it detects that it has not been declared the entry or exit of cash or bearer negotiable instruments by an amount equal or greater than US$10,000 according to article 4 of the Law No. 19,913 being able to retain up to 30% of the money not declared or 100% of the bearer instruments.

II. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO APEC INEGRITY STANDARDS (CROSS CHECK WITH I.A. ABOVE)

LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Strengthen Measures to Effectively Prevent and Fight Corruption and Ensure Transparency by Recommending and Assisting Member Economies to:

Establish objective and transparent criteria that assure openness for merit, equity, efficiency for the recruitment of civil servants, and promote the highest levels of competence and integrity;
Adopt all necessary measures to enhance the transparency of public administration, particularly with regard to organization, functioning and decision-making processes;
Develop and implement appropriate public financial disclosure mechanisms or codes of conduct for senior-level public officials [SOM III: Guidelines];

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

As informed in I.A. Adopting Preventive Measures
Chapter II, Articles 5-13

III. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO SAFE HAVENS (CROSS CHECK WITH I.C. ABOVE):

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LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Deny safe haven to officials and individuals guilty of public corruption, those who corrupt them, and their assets:
Promote cooperation among financial intelligence units of APEC members including, where appropriate, through existing institutional mechanisms.
Encourage each economy to promulgate rules to deny entry and safe haven, when appropriate, to Officials and individuals guilty of public corruption, those who corrupt them, and their assets.
Implement, as appropriate, the revised Financial Action Task Force (FATF) 40 Recommendations and FATF's Special Recommendations (Santiago Course of Action)
Work cooperatively to investigate and prosecute corruption offenses and to trace freeze, and recover the proceeds of corruption (Santiago Course of Action)
Implement relevant provisions of UNCAC. These include:
Art. 14 (Money laundering)
Art. 23 (Laundering of Proceeds of Crime)
Art. 31 (Freezing, seizure and confiscation)
Art. 40 (Bank Secrecy)
Chapter V (Asset Recovery)

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

The Chilean anti-money laundering system is currently regulated by Law No. 19,913, published in the Official Gazette on December 18, 2003, and amended by Act No. 20,119, published on 31 August 2006; Law 20,371, published on August 25, 2009; No. 20,393, published on December 2, 2009; No. 20,507, published on April 8, 2011, and 20,549, published on November 2, 2011. These laws establish the Financial Analysis Unit (UAF), and amend several provisions on money laundering.
Generally, the law is organized upon two pillars: a preventive and a control pillar.

(1) Preventive Pillar
The central body is the Financial Analysis Unit (UAF), primarily responsible for analyzing Suspicious Transactions Reports (STRs) and Cash Transactions Reports which different institutions and persons bound to report – as set by the law - should send. If the analysis of the records submitted by the said parties gives rise to suspicions about the commission of the crimes of money laundering and conspiracy to launder money, it shall send all records to the Public Prosecutor's Office, for such agency to determine whether to initiate an investigation for money laundering or conspiracy to launder money. The Financial Analysis Unit's other duties, referred to in Article 2 of the law, include requesting from any natural or legal persons required to report suspicious transactions any background that, as a result of a suspicious transaction review – previously reported to the UAF or detected by said agency in the discharge of its duties – may be necessary to develop or complete the analysis of such transaction. If the information were secret or confidential or should it be requested from a person other than one bound to report a court's authorization must be sought; organizing, maintaining and managing files and databases, which, with due care for their protection, can be incorporated into national and international networks of information for due discharge of their duties; recommending measures to the public and private sector in order to prevent the commission of the crime of money laundering; giving generally applicable instructions to persons bound to report suspicious transactions and, at any time, verifying their implementation; exchanging information with their counterparties abroad, and imposing administrative sanctions provided by law.

(2) Control Pillar:
As regards criminalization of money laundering and investigation thereof, Law No. 19,913 turned out to be a great improvement to the previous criminal regulations, contained in Article 12, Law No. 19,366, which sanctioned the illicit traffic in narcotic drugs and psychotropic substances. The offense of money laundering is now criminalized in Article 27, Law N° 19,913, partially following the model of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of December 20, 1988 (Vienna Convention) and the United Nations Convention against Transnational Organized Crime of November 15, 2000 (Palermo Convention). The recommendations of the Financial Action Task Force of South America (GAFISUD) were also taken into consideration.
The Public Prosecutor's Office is the sole Chilean agency responsible for the investigation of the crimes of money laundering and conspiracy to launder money. The law also provides that rules governing special investigative techniques, asset freezes, prosecution and others established in Law No. 20,000 - which punishes traffic in narcotic drugs and psychotropic substances - shall apply also to money laundering and conspiracy to launder money (eg, covert agents, informants, tapping of communications, surveilled deliveries, international cooperation, etc.).

Article 14: Money Laundering
Article 27 of Law 19,913 establishes several hypotheses about money laundering:
Article 27.- A penalty of long-term imprisonment, minimum to medium degrees, and a fine ranging from two hundred to one thousand monthly tax units shall be imposed on any person that: (a) in any way conceals or disguises the illicit origin of certain goods, knowing that they come, directly or indirectly, from the commission of any offense referred to in Law No. 19,366, which sanctions the illicit traffic in narcotic drugs and psychotropic substances; in Law No. 18,314, which defines terrorist acts and establishes their sanction; in Article 10 of Law No. 17,798, on arms control; in Title XI, Law No. 18,045, on securities market Law 20,371; in Title XVII, statutory decree, Art. 2, No. 1, and 2, No. 3, of 1997, issued by the Ministry of Finance; Banking General Law, publised on 25.08.2009; in paragraphs 4, 5, 6, 9 and 9bis, Title V, Book II, of the Criminal Code, and articles 141, 142, 366 quater, 367, 411 bis, 411 ter, 411 quater and 411 quinquies of the Criminal Code, or, else, that knowing their source, conceals or disguises these goods.
(b) Any person who acquires, possesses, owns or makes use of those goods, for profit, if, at the time of receipt, he/she was knowledgeable of their illicit origin.
The same penalty shall apply to the conduct described in this article if the goods come from an act committed abroad, which is punishable in the place of commission and, in Chile, it amounts to any of the offenses referred to in item (a) above.
For purposes of this article, goods are defined as objects of any kind having a pecuniary value, tangible or intangible, movable or immovable, as well as legal documents or instruments evidencing title to or interest in them.
If the perpetrator of any conduct described in item (a) ignores the origin of the goods due to gross negligence, the penalty prescribed in paragraph one shall be reduced by two degrees.
The fact that the origin of the goods referred to above is a an unlawful act typical of the offenses in letter (a) need not be established in prior conviction; it may be established in the proceeding aimed at trying the offense described in this article.
If the offender has acted as principal offender or accomplice originating such goods, he will also be charged with the offense in this article and punished accordingly.

The law punishes two basic conducts by way of money laundering: (a) to conceal or disguise the origin of certain goods or the goods themselves despite being aware that they come, directly or indirectly, from the commission of any of the foregoing offenses, as established in the law (concealment), and (b) to acquire, own, possess or use illegal assets for profit, despite knowing their origin (contact). The law also provides for a culpable type of money laundering, punishing anyone who conceals or disguises the illegal origin of the goods or the goods themselves without knowing their origin because of gross negligence.

The term "goods" includes objects of any kind having a pecuniary value, tangible or intangible, movable or immovable, as well as legal documents or instruments evidencing title to or interest in them (Art. 27, third paragraph). Thus, the description of "goods" coming from the offenses referred to above is quite ample (goods of any kind having a pecuniary value, as well as legal documents or instruments evidencing title to or interest in them). Also, the law sets no objective limit as to the value of goods matter of the offense for money laundering purposes. In other words, the value of goods is irrelevant for establising the existence of the criminal conduct. Finally, prevailing rules and regulations punish money laundering of proceeds coming, directly or indirectly, of the perpetration of the foregoing offenses (Article 27 letter a)).

Regarding the level of knowledge about the illicit origin of the goods and their laundering, Article 27, Law No. 19,913, punishes both those who acted with intent or "knowingly" and those having acted out of gross negligence, restricting the latter hypothesis to only one of the typical conducts of the "culpable" laundering (conduct in letter (a), Article 27, i.e. concealment or disguise of the illicit origin of the goods or of the goods themselves). The law employs the term "knowingly" in item (a), Article 27, and "knowledge" in item (b) of the same rule.

According to doctrine and most of the Chilean jurisprudence, the term "knowingly" used in Article 27, Law No. 19,913, to refer to knowledge of the illicit origin of the goods covers both direct and eventual intent. The main reason therefor, among others, is that Article 27 itself defines culpable laundering; therefore, it would be senseless, from a systematic point of view, to punish a negligent and culpable conduct and not the one willfully committed (which fact would result in punishment lacking any logical or systematic basis).

Furthermore, the laundering hypothesis in letter (b), Article 27, does not include the term "knowingly", but restricts to "knowledge" about the illicit origin of the goods, a term that has also been understood as to include both direct malice and eventual intent about knowledge of the illicit origin of the goods.

Regarding the negligence hypothesis, article 27, paragraph 4, states that any person having acted according to letter (a), same article (conceal or disguise, in any form, the illicit origin of the goods or the goods themselves) who ignores the origin of the goods out of gross negligence (culpable conduct) shall be imposed a lesser punishment.

Article 28. - The persons who join or organize themselves to carry out any of the conducts described in the preceding article shall, for this fact alone, be imposed the following punishments: A. – Long-term imprisonment, medium degree, upon anyone who finances, controls, directs or plans the acts to be proposed, and 2. – Long-term imprisonment, minimum degree, upon anyone who provides vehicles, weapons, ammunition, tools, shelter, hiding places, meeting places or who otherwise cooperate with the fulfilment of the organization's goals.

Where the association has been formed through a legal person, as a penalty in addition to the one imposed upon individuals, the said legal person shall be dissolved and its legal status cancelled.

Article 28 defines a special offense of conspiracy to launder money, i.e, it punishes the fact of organizing to perform any of the punishable offenses described as money laundering, but distinguishes the penalty to be imposed upon the members of the organization depending on the roled played (leader, financer or just members).

This rule punishes all members of the criminal organization engaged in money laundering, penalties varying according to their role in the organization. The conspiracy is punishable as a separate crime, independent from those that make up the organization's criminal purpose; accordingly, its members are sanction irrespective of whehter they have actually commited the money laundering offenses they intended to. If any of them has actually committed it, he is punished as principal offender of both crimes (there is, in fact, a concurrence of offenses).

Additionally, when the organization has been formed through a legal person, the dissolution or cancellation thereof shall be imposed as an accesory penalty.

It must be noted that legal persons are criminally liable in Chile for their participation money laundering. Law No. 20,393, published in Official Gazette dated December 2, 2009, establishes the criminal liability of legal persons for money laundering, terrorist financing and bribery of domestic and foreign public officials.

Indeed, Law No. 20,393 establishes the criminal liability of legal persons for money laundering, terrorist financing and bribery of domestic and foreign public officials. To make legal persons criminally liable for said crimes, the formulas contained in Articles 3, 4 and 5 of the Law are used, which can be summarized as follows:

Legal persons are criminally liable for the above crimes, if commited, directly and immediately to their benefit, by their owners, holding companies, senior managers, CEOs, representatives or those discharging managerial and supervisory duties, or by such individuals as are under their direct supervision, provided that the commission of said offense is the result of a brech, by the legal person, to discharge the managerial and supervisory duties.

Criminal liability of legal persons, therefore, requires that offenses had been committed in their interest and to their benefit by any individual holding managerial and supervisory powers, and that there is a breach of managerial and supervisory duties on the part of the legal person. This model is sometimes called "default liability of a company". According to the law, a legal person has breached its managerial and super-

visory duties if it has failed to adopt an offense prevention mechanism, which minimum contens is defined in article 4 of the Law (appointment of a prevention manager; definition of resources and powers of the prevention manager; establishment of an offense prevention system; supervision and certification of the offense prevention system). Pursuant to Article 5, the criminal liability of a legal person is autonomous and survives the extinguishment of an individual's criminal liability due to decease or lapse of the criminal action, dismissal without prejudice based on non-appearance or derangement, or even where liability cannot be demonstrated, provided that it is conclusively established that the offense should have necessarily been committed within the sphere of the powers and duties of such individuals holding managerial and supervisory powers as referred to in article 3.
The law further contains circumstances mitigating and aggravating criminal liability. With respect to sanctions, legal persons may be imposed the following penalties:

1. Dissolution of the legal person or cancellation of its legal status. This penalty cannot be imposed upon State enterprises or private law persons providing a service which interruption would cause a serious social and economic impact or serious damage to the community. Also, this penalty would only be applied in case of recidivism or repeated cases of money laundering.
2. Temporary or perpetual prohibition to enter into acts and contracts with State agencies.
3. Partial or total loss of tax benefits or absolute prohibition to enjoy the same for a certain period of time.
4. A fine for State benefit.
5. Accessory penalties (publication of an excerpt of the judgment, confiscation of proceeds of crime and other goods, effects, objects, documents and instrumentalities, and if the offense involves the investment of corporate resources in excess of corporate income, the legal person shall be sentenced to lodge into the Treasury funds an amount equivalent to the investment made.

In terms of procedure, both the investigation and the prosecution of the legal person shall be conducted by the criminal division. This means that the Public Prosecutor's Office will be responsible for conducting the investigation against the legal person and, if appropriate, bring charges against it, and that criminal courts (guarantee courts and criminal courts) shall be responsible for determining its liability, if appropriate. In general, with certain changes, most of the institutions, principles and rules of procedure applicable to individuals remain the same, and are established both in the Criminal Procedure Code and in special laws.
However, the Law amended Articles 294 bis of the Criminal Code (on penalties applicable to a "generic" conspiracy) and 28 of Law No. 19,913 (which defines "conspiracy to launder money), as follows:

Where the association has been formed through a legal person, as a penalty in addition to the one imposed upon individuals, the said legal person shall be dissolved and its legal status cancelled.
With this regulation, the law provides a system to hold legal persons criminal liable for their participation in the offense of conspiracy. Said system consists in attributing criminal liability to a legal entity when have been used as a basis or medium to commit conspiracy.
Like any crime, for both hypotheses (Art. 27 and Art 28), the general regulations on participation (articles 15 et seq. of the Criminal Code) and consummation degrees (attempted, frustrated, completed offense, without prejudice to the special rules on the matter) are applicable to money laundering. In this way, both direct perpetrators, co-perpetrators and instigators, may be punished for money laundering; the offense is deemed as completed since the very beginning of its execution, and conspiracy to commit the crime, which generally goes unpunished, is especially imposed a diminished penalty, due to the application to money laundering of the special rules on the matter found in articles 17 and 18 of Law No. 20,000, on illicit traffic in narcotic drugs and psychotropic substances.
Between 2006 and April 2012 53 final judgments have been issued fro money laundering. Of all judgments, 46 were convictions and 7 acquittals. In total, 90 people have been sentenced for this offense and about US$ 6.5 millions had been seized.

Article 23. Laundering of proceeds of crime
Subparagraph i), item (a), Paragraph 1
Subparagraph ii), item (a), Paragraph 1
Subparagraph i), item (b), Paragraph 1
To identify the relevant domestic laws, reference is made to the above-described measures:
Subparagraph ii), item (b), Paragraph 1

Article 33, item (d), Law No. 19,913 provides that, in respect of money laundering and conspiracy to launder money, all the regulations in Law No. 19,366 on illicit traffic in narcotic drugs and psychotropic substances, and in any other law substituting or amending it, (presently Law No. 20,000), shall be applied to the following matters:
(a) Investigation (including, inter alia, international cooperation, special investigative techniques and others); (b) Disqualification of attorneys; (c) Precautionary measures and seizures, and (d) Prosecution and enforcement of the sentence imposed (includes matters such as special aggravating circumstances, inadmissibility of certain mitigating circumstances and rules on offense consummation and conspiracy punishability, inter alia).
As regards the rules on iter criminis (degree of completion of an offense), Articles 17 and 18 of Law No. 20,000 are applied. According thereto, the offense is held as con-

summated, for penalty purposes, since any attempt is made to perpetrate it. Conspiracy to commit this offense – a conduct that in our legal system, as a rule, goes unpunished – is specially sanctioned.

Concerning the time where the act is punished as a consummated offense and early punishment under iter criminis, articles 17 and 18 state as follows:

Article 17.- Conspiracy to commit the offenses described in this Law shall be imposed the penalty attached to the offense in question, reduced by one degree.

Article 18.- Offenses dealt with under this Law shall be held and punished as completed since the beginning of its execution.

As for the punishment of other members and special participation ways, such as instigation, upon application of the general rules of the Criminal Code, Article 15, all such participation ways are covered, the offender being punisable either as perpetrator, accomplice or accessory. Chile's legal system provides an ample construction to the term participation, as evidenced hereinafter: Art.15. Perpetrators are deemed to be: 1. Those who take part in the execution of an act, whether in an immediate and direct way, or by preventing or attempting to prevent its avoidance; 2. Those who directly force or induce others to commit it. 3. Those who concert to carry it out, provide the means therefor or witness the act without actually taking part therein. Article 16 refers to accomplices and article 17 to accessories after the fact. It should be noted that in Chile covering up a crime is a form of participation rather than a separate offense - except for aggravated forms of an offense or sui generis crimes, as money laundering and reception of stolen goods. Therefore, in principle, and upon fulfillment of the legal elements and requirements, a person may be punished for covering up any offense, including, in principle, money laundering. Item (a), Paragraph 2

Money laundering predicate offenses are not described in Chile in terms of their severity or penalty, but only as a catalog. Indeed, Article 27, item (a), Law No. 19,913 contains an exhaustive list of predicate offenses for money laundering. Currently, the list of predicate offenses include the following:

• Offences under Law No. 19,366, which punishes illicit traffic in narcotic drugs or psychotropic substances (this law was repealed and replaced by Law No. 20,000, published in the Official Gazette on February 16, 2005, to which reference is understood to have been made); the manufacturing and production of narcotic drugs or psychotropic substances; the manufacturing and traffic in precursors and essential chemicals; the supply of aromatic hydrocarbons to people under 18 years old; prescription abuse; illegal supply; sowing, planting, cultivation or harvesting of plants producing narcotic drugs or psychotropic substances; diversion of legal plants producing narcotic drugs or psychotropic substances; facilitation of goods to commit crimes described herein; allowing drug traffic at entertainment centers; failure by public officials to file a report; use of drugs by military staff and assimilated military personnel; use of drugs by seaman; conspiracy to commit the offenses described in this law; conspiracy to commit the offenses described in this law, as an exceptional figure, as generally the Chilean laws fail to punish conspiracy; and other special offenses (breach of investigation secrecy, failure to provide information requested by the Public Prosecutor's Office, etc.).

• Offences under Act No. 18,314, which defines terrorist acts and establishes penalties therefor. This law states that certain offenses, which the law itself defines, must be considered as terrorist acts since they have been committed to cause a justified fear in the population or part of the population of being victims of the same kind of offense, either by the nature and effects of media used, by the evidence that a deliberate plan is being followed to attack a certain category or group of people, or either because they are committed for authorities to act or refrain from acting or to condition their acts. Article 2 of the Law contains a list of terrorist offenses, including, inter alia, homicide, injuries of varying severity, kidnapping, child abduction, arson and destruction, derailment, poisoning of food, water or other beverages for public consumption, spread of pathogens, seizure or attack of a vessel, aircraft, bus or other public transportation service, physical assault against political, judicial, military, police or religious authorities, placement, release or firing of bombs or explosives or incendiary devices and conspiracy to commit terrorist acts. It also includes, as a separate offense, the financing of terrorism, which punishes anyone who solicits, collects or provides funds for the commission of any terrorist act referred to above. Terrorist financing is punishable under Article 8 of the law.

• Offenses described in article 10, Law No. 17,798, on arms control. This offense punishes anyone who manufactures, assembles, imports into the country, exports, transports, stores, distributes or enters into agreements on war material, firearms, ammunition and cartridges, explosives, bombs and other similar devices, chemical substances that can be used to manufacture explosives, ammunition, projectiles, missiles, rockets, bombs, cartridges and tear gas items, without the authorization of the Chilean Mobilization Directorae General. The same rule punishes those who construct, condition, use or own facilities to manufacture, assemble, test, store or deposit the above items without the authorization of Chilean Mobilization Directorate General. • Offences under Title XI, Law No. 18,045, on securities market. Offenses include granting and obtaining false information or certifications, using privileged information, disclosing privileged information, delivering false information to the market and using securities given under custody. • Offences under Title XVII, statutory decree No. 3 of 1997, issued by the Ministry of Finance, General Banking Law. Violations to the General Banking Act, predicate offenses for money laundering, are mainly related to the production, use, delivery or statement of false information by directors, managers, subscribers, employees or external auditors of a financial institution subject to supervision by the relevant Commission and the fraudulent obtention of loans.

• Offences in paragraphs 4, 5, 6, 9 and 9bis of Title V, Book II, of the Criminal Code. This category includes offenses committed by public officials in the discharge of their duties, among others: breach of trust where the perpetrator is a member of the Courts of Justice or a court Attorney; embezzlement of public funds, consisting in theft or diversion of funds; application of funds for a purpose other than the one stated or refusal to

pay or deliver funds; tax fraud; illegal exaction and incompatible negotiation; passive and active bribery, both by domestic and foreign paublic officials and unjust enrichment.
• Offences under Articles 141 and 142 of the Criminal Code, describing the offenses of kidnapping and abduction of children under 18 years old.
• Offences under Articles 366 quarter and 367 of the Criminal Code, describing offenses of a minor exposure to sexual acts (watching pornographic material, sexual activities or taking part in the production of pornographic material), and promoting or facilitating child prostitution
• Offences under Articles 411 bis, 411 ter, 411 quarter and 411 quinquies of the Criminal Code, which respectively provide for the following offenses: illicit traffic of migrants; promoting or facilitating the entry or departure of persons to engage in prostitution, whether within the country or abroad; forced labor; slavery or similar practices, removal of organs, and conspiracy to commit any of these crimes.
Item (b), Paragraph 2
As noted above, predicate offenses for bribery of public officials are dealt with in paragraphs 4, 5, 6, 9 and 9bis, Title V, Book II, of the Criminal Code. This category includes offenses by public officials in the discharge of their duties, to wit: breach of trust where the perpetrator is a member of the Courts of Justice or a court Attorney; embezzlement of public funds, consisting in theft or diversion of funds; application of funds for a purpose other than the one stated or refusal to pay or deliver funds; tax fraud; illegal exaction and incompatible negotiation; passive and active bribery, both by domestic and foreign paublic officials and unjust enrichment.
Item (c), Paragraph 2
Article 27, paragraph 2, of Law No. 19,913 provides: "The same penalty shall be applied to the conduct described in this article if the goods come from an act committed abroad, which is punishable in the place of commission and that, in Chile, amounts to any of the offenses listed in item (a) above."
In view of the above, it suffices that an offense be punishable in the place of commission and amount to a predicate offense in Chile for money laundering of the proceeds thereof to be punished.
Item (e), Paragraph 2
The final paragraph of Article 27, Law No. 19,913, reads: "If the person participating as a principal offender or accomplice of the originating fact also commits the offense in this article, he shall also be imposed the penalty herein." Consequently, Chile may punish any person having committed a predicate offense for money laundering and the actual money laundering offense (punishment of the "self-laundering" offense) both as regards concealment under item (a), article 27, and contact under item (b), of the same regulation.

Article 31. Freezing, seizure and confiscation
Item (a), Paragraph 1
Item (b), Paragraph 1
Freezing, seizure and confiscation procedures and mechanisms of assets related to money laundering are governed by a special statute in Chile, as opposed to the general rules contained in the Criminal Code and the Criminal Procedure Code, applicable to all crimes, unless a special rule exists.
Indeed, Article 33, Law No. 19,913 on money laundering, refers to regulations in Law No. 20,000, on illicit traffic in drugs, on a wide range of subjects, including precautionary measures, seizures and origin of goods seized (or confiscated), the scope thereof and destination of the goods seized. In other words, the special rules on seizure, freezing (precautionary measures) and confiscation of goods governed by the law on illict traffic in drugs are fully applicable to money laundering. Additionally, for all matters not expressly regulated in special drug and money laundering laws, general rules contained in the Criminal Code and the Criminal Procedure Code apply. Article 32, Law No. 19,913, particularly governs freezing of assets in case of money laundering.
As regards seizure, it is regulated and defined in Article 31 of the Criminal Code, generally applicable, which reads as follows:
"Article 31. Any penalty imposed for an offense or crime entails the loss of the proceeds thereof and the instrumentalities used for its perpetration, unless they belong to a third party having no liability for the crime or misdemeanor. "
As regards money laundering, Article 45, Law No. 20,000, expressly provides that instrumentalities used to commit an offense, the proceeds thereof and any profit obtained will be seized. The rule specifically states:
"Article 45. - Notwithstanding the general rules, real estate, movable property - such as land motor vehicles, vessels and aircraft - cash, trade effects and bearer securities, and generally any other instrumentality that has served or has been employed in the commission of any offense punishable under this law; the effects and benefits coming therefrom, whatever their legal nature or the transformations they have undergone, and all such property as supplied or acquired by third parties despite being fully aware of their destination or origin shall be seized. The same penalty shall apply to the substances identified in the first paragraph of Article 2, and raw materials, components, materials, equipment and devices used or intended to be used in any way, to commit any offense punishable under this law."
It must be added that Article 13, No. 2, of Law No. 20,393, which establishes criminal liability of legal persons in the case of money laundering, terrorist financing and bribery of domestic and foreign public officials, provides:
"Article 13. Accessory penalties. In addition to the penalties mentioned in the foregoing articles, the following accesory penalties shall be applied: (...) (2) Seizure. The proceeds of the crime and other property, effects, objects, documents and instrumentalitiess of the same shall be seized."
Chile does not allow, in respect of any offense, to seize property for an amount equivalent to the proceeds. This follows from the wording of Article 31 of the Criminal Code, which regulates seizure. In its first part, it states that any penalty imposed for

an offense or crime entails the loss of its proceeds and the instrumentalities used to perpetrate it, there being no possibility of seizing other goods for an equivalente consideration.

Paragraph 2

With respect to money laundering, there exists, as noted above, a special regulation on confiscation and freezing (precautionary measures) assets linked to crime, with a view to eventually confiscating them.

In relation to the identification of goods, the only institutions that can currently identify and trace goods that are or may become subject to confiscation is the Public Prosecutor's Office, with the assistance of both police (Chilean "Carabineros" and Investigative Police) as part of a specific criminal investigation, as provided for in articles 180 et seq. of the Code of Criminal Procedure. The Financial Analysis Unit may require information and, on the base thereof, identify and track goods, but within the analysis of a Suspicious Transaction Report.

The law grants broad powers to prosectors of the Public Prosecutor's Office, as entity responsible for conducting a criminal investigation to identify and trace property. In this regard, Article 180, first and third paragraphs, of the Criminal Procedure Code provide that prosecutors will lead the investigation and take, on their own through the police, any investigations formalities they deem necessary to clarify the facts. Prosecutors may require information from any person or public official, who can not excuse themselves, save in the cases provided by law. The rule also states that public authorities and officials who, as a general rule, are to be required – information requests - to identify assets, such as notaries public, real estate registrars, the Internal Revenue Service, the National Register of Motor Vehicles, the Civil Registration and Identification Service, among others, are bound to provide such information for free.

Article 181 of the Criminal Procedure Code, in turn, provides in paragraph two that, for faithfully discharging investigative purposes, scientific operations may be instructed to be performed, such as taking of pictures, filming or recording and, in general, reproducing images, voices or sounds.

For its part, Law No. 20,000 on illicit traffic in drugs - which rules on investigation, among others, are applicable to money laundering - contains a number of special investigative rules which have proved efficient for the identification and tracking of goods. These measures include the effective cooperation, surveilled or controlled deliveries, restricted communications and other technical means of investigation, covert agents, and informants.

It also provides that the investigative actions, including seizure and freezing of assets, may be requested by the Public Prosecutor's Office before formalizing the investigation and without notice to the person being investigated.

It should be noted that, if an effective identification and tracing of goods, steps must be taken tha devoid, disturb or restrict the accused or a third party's rights enshrined in the Constitution, court authorization shall be sought. In this case, authorization must be granted by the Guarantee judge (Article 9, Criminal Procedure Code), for example to lifting banking secrecy, according to Article 154 of the General Banking Law. In other words, lifting of banking secrecy in Chile requires court authorization.

In terms of seizing and freezing (precautionary measures) goods, Laws No. 19,913 and 20,000 also contain special rules applicable to money laundering. These rules expressly provide for confiscation and freezing (precautionary measures) of goods in order to prevent the use, development, benefit or use of such goods, as well as to prevent the illicit proceeds from turning into activities concealing or disguising its criminal origin, thus preventing any good transaction, transfer or disposal.

In this regard, as to precautionary measures aimed at preventing the free disposition of crime-related goods, i.e. freeze them, article 32 of Law No. 19,913 provides:

"Article 32.- In the investigation of offenses referred to in Articles 27 and 28 of this Law, the Public Prosecutor's Office may ask the Guarantee judge to decree any precautionary measure preventing the use, development, benefit or destination of any class of goods, securities or monies derived from the crime dealt with. For these purposes, without prejudice to any other powers vested by law, the court may order, inter alia, a prohibition to carry out certain acts and enter into any contracts, as well as to enter them in all kinds of records; to retain in banks or financial institutions deposits of any nature whatsoever; to prevent transactions with stocks, bonds or debentures, and, in general, to prevent the conversion of illicit advantage into activities concealing or disguising their criminal origin."

This rule has been drafted in broad terms, allowing to take any step to freeze goods for the above purposes. In this regard, the regulation on precautionary measures departs from the general rule on the matter, contained in Articles 157 and 158 of the Criminal Procedure Code, which remit to the civil procedural law, which is more confined as to the measures that can be requested, since they are exhaustively listed.

With respect to seizure, Law No. 19,913 contains no special rule; therefore, we must, by express reference in Article 33, item (c), analyze the rules in Law Nº 20,000, article 27, final paragraph, which reads: "The Public Prosecutor's Office, with the authorization of the Guarantee judge, granted under Article 236 of the Criminal Procedure Code, may, without notice to the person investigated, collect and seize documents and background necessary for investigating the facts, should there be serious indications that this step may result in the discovery or verification of a fact or circumstance being material to such investigation. To such end, the provisions in Articles 216 and 221 of the Criminal Procedure Code shall apply."

Concerning the application for and granting of precautionary measures and seizures, it must be noted that that they can be decreed without the person being investigated having knowledge thereof, at the request of the Public Prosecutor's Office and upon authorization by the Guarantee judge of jurisdiction.

Precautionary measures and seizure are widely used by the Public Prosecutor's Office in

money laundering investigations, which is partly reflected in seizures decreed in final judgments connected with this offense.

Paragraph 3

The Public Prosecutor's Office is responsible for the administration of goods seized or frozen, in accordance with the provisions of Article 188 of the Criminal Procedure Code, which reads as follows:

"Article 188. Custody of goods.
The goods collected during the investigation will be kept under the custody of the Public Prosecutor's Office, which must take the necessary measures to prevent tampering thereof in any way.
Complaints may be filed with the Guarantee judge for non-observance of the foregoing provisions, so that the necessary measures are taken to protect the integrity of the goods collected.
Participants will have access to said goods in order to recognize them or subject them to any test, to the extent they are authorized by the Public Prosecutor's Office or, if appropriate, by the Guarantee judge. The Public Prosecutor's Office shall keep a special register identifying the persons authorized to recognize or manipulate such goods, a copy of such authorization being deposited, if appropriate."
Each Public Prosecutor's local office within the country shall keep a record of the goods seized, as well as management system thereof, whether the goods are physically located at the Public Prosecutor's office or somewhere else.
Moreover, the special rule on seizure contained in Article 40, Law No. 20,000 (applicable, as already told, to the money laundering offense) must be borne in mind, particularly as regards the administration of the goods seized, their destination and early disposition in certain cases. "Article 40. - The instrumentalities, objects of any kind and proceeds seized under this Law – as referred to in Articles 187 and 188 of the Criminal Procedure Code - may be assigned by the Guarantee judge, at the request of the Public Prosecutor's Office, to a State agency or, upon a security being posted, to a non-profit private institution aimed at preventing and treating drug abuse and reinserting abusers into society, or controlling the illicit traffic in narcotic drugs, after consulting the Narcotic Drugs National Council, particularly its Executive Secretariat.
These goods must be used for purposes within the line of business of the receiving entity, which shall duly establish that its resources are sufficient enough to bear the conservation costs thereof.
Seizure of arms shall be governed by Law No. 17,798 on Arms Control. The funds will be deposited at Banco del Estado de Chile, in adjustable accounts or securities.
If the seizure applies to industrial or commercial establishments or crops, the Guarantee judge, at the request of Public Prosecutor's Office, will appoint a provisional administrator, who must report on the discharge of his duties to the latter, at least quarterly.
The seizure of a real estate includes its fruits or income. If the Guarantee judge, at the request of the Public Prosecutor's Office, deemes it fit to dispose of any good referred to in this article, he shall so decree in a well-founded decision. In the case of perishable goods, or goods that may sustain deterioration, or which conservation is difficult or expensive, they shall be disposed of. Disposition shall be conducted by "Dirección General del Crédito Prendario" in public auction, unless the court, also at the request of the Public Prosecutor's Office, decrees the direct sale thereof.}
In the latter case, in the event that the judgment does not include the seizure of goods disposed of, the purchase price, its adjustment and interests shall be paid to whom it may concern. The same applies to the monies referred to in paragraph two.
The Public Prosecutor's Office must inform the Ministry of the Interior, quarterly, on the monies, securities and other goods seized under this Act."
With respect to goods seized, as provided for in Article 46, Law N ° 20,000, the proceeds of the disposition of assets and securities, as well as the seized cash, will be applied to a special fund kept by the Ministry of the Interior for drug prevention, treatment and rehabilitation programs.
Article 46, Law No. 20,000, in turn, regulates the application of seized goods, noting that the proceeds of the disposition of assets and securities, as well as the seized cash, will be applied to a special fund kept by Ministry of the Interior for use in drug prevention, treatment and rehabilitation programs.

Paragraph 4
Paragraph 5
Paragraph 6

Concerning the transformations sustained by crime proceeds, reference has already been made above, taking particular account of the provisions in Article 45, Law No. 20,000, the contents of which is transcribed:
"Article 45. - Notwithstanding the general rules, real estate, movable property - such as land motor vehicles, vessels and aircraft - cash, trade effects and bearer securities, and generally any other instrumentality that has served or has been employed in the commission of any offense punishable under this law; the effects and benefits coming therefrom, whatever their legal nature or the transformations they have undergone, and all such property as supplied or acquired by third parties despite being fully aware of their destination or origin shall be seized. The same penalty shall apply to the substances identified in the first paragraph of Article 2, and raw materials, components, materials, equipment and devices used or intended to be used in any way, to commit any offense punishable under this law."
It must also be added, as for money laundering, that, accordingl to law, the material object of this offense are the direct or indirect proceeds of any of the offenses listed in the catalog. Consequently, for the purposes of this offense, goods having been transformed or converted into other goods may be seized and later on confiscated if they

are deemed to, at least, be the indirect proceeds of any predicate offense.
Likewise, reference must be made to the law amending Law No. 19,913, which, inter alia, contains amendments allowing for the seizure or confiscation of goods "for an equivalent amount", as provided and stated in several international instruments. The Chilean system against money laundering was evaluated during 2010 by GAFISUD (Financial Action Task Force of South America) as part of the 3rd round of mutual evaluation. The evaluation methodology places a special emphasis on compliance and effectiveness of the standards and procedures implemented (http://www.gafisud.info/pdf/IEMChile3raronda_2.pdf).

Paragraph 7
As already mentioned, the law grants broad powers to the Public Prosecutor's Office, as the entity responsible for conducting criminal investigations to identify and trace goods. In this regard, Article 180, first and third paragraphs, of the Criminal Procedure Code, provide that prosecutors will lead the investigation and take, on their own or through the Police, any steps they may deem appropriate to clarify the facts. Prosecutors may require information from any person or public official, who cannot excuse themselves, except in the cases provided for by law. The rule also states that public authorities and officials who, as a general rule, are to be required – information requests - to identify assets, such as notaries public, real estate registrars, the Internal Revenue Service, the National Register of Motor Vehicles, the Civil Registration and Identification Service, among others, are bound to provide such information for free.
Information subject to banking secrecy (information on deposits and placements) must be submitted by banks and other financial institutions after obtaining a court's authorization. Information subject to banking secrecy (e.g. information in a customer's folder or credit card transactions, any transaction other than deposits or placements) can be requested from banks or financial institutions directly by the Public Prosecutor's Office, without court authorization, for it has a legitimate interest and no impairment of the affected person's net worth can be expected, in accordance with the provisions of Article 154 of the General Banking Law. This is explained in detail hereinbelow.

Paragraph 8
Chilean laws do not contain a rule allowing an offender to be bound to establish the lawful origin of the alleged proceeds of a crime or other goods liable to seizure, mainly because the burden of proof rests always iin the Public Prosecutor's Office; otherwise, the presumption of innocence principle, enshrined in the Chilean constitution, would be at stake.
The Chilean Constitution sets forth the presumption of innocence principle, under which the Public Prosecutor's Office is legally bound to prove a person's criminal liaiblity or the unlawful origin of his property before the court. The accused may remain silent and has no obligation to prove his innocence or the legitimacy of his property.
Indeed, Article 19, No. 7, item (f), of the Constitution provides: "In criminal actions, the accused may not be required to testify under oath about his own acts, nor aginst his descendents, spouse and such other persons as specified by law the certain cases and circumstances."
In this context, in Chile, any change in the burden of proof in order for the accused to be required to establish the lawful origin of the goods to be seized is against the Constitution. Indeed, Article 19, paragraph 7, No. 3, of the Chilean Political Constitution states that "the law cannot presume criminal liability"; additionally, international treaties signed and ratified by Chile expressly enshrine the presumption of innocence. Criminal and constitutional doctrine note the dual effect of the presumption of innocence: first it guarantees that the accused of a crime shall be treated as innocent until proven guilty of an offense; it also establishes that the burden of proof shall rest in the prosecuting agency (the Public Prosecutor's Office in Chile). Moreover, seizuer or confiscation (as defined in Article 31.1, which is in line with Chilean laws) covers goods used in the commission of a crime and the proceeds thereof: to require the offender to establish the lawful origin of the goods means to provide him with the burden of effecting the penalty, since, as a general rule and the rule in 31.8, "any good in the possession of the accused shall be subject to seizure, unless otherwise established". However, the rule is against the Constitution because it alters the burden of proof because of the existence of a penalty as a legal consequence of the offense and also because it relieves the Public Prosecutor's Office from a dulty vested in it under the Constitution (Article 83, Constitution of the Republic) .

Paragraph 9
In relation to bona fide third parties, the law protects their rights. Regarding seizure, Article 31 of the Criminal Code seizure of property belonging to a third party not liable for the offense or crime. Article 45, Law N ° 20,000, applicable to offenses criminalized under the drug and money laundering law, states that goods supplied or acquired by third parties that are fully aware of the destination or origin thereof may also be seized. Consequently, the rule requires knowledge by the third, excluding bona fide third parties. As regards goods seized, the general rule in Article 189 of the Criminal Procedure Code is applicable. According thereto, participants or third parties may lodge claims or third-party actions during the investigation in order for the goods collected or seized to be returned. These complaints or actions shall be heard by the Guarantee judge of jurisdiction. The Judge's decision should be limited to state the claimant's right to said goods, but the restitution thereof will only take place after the determinatioin of the proceeding, unless the court finds it unnecessary to keep them under its custody.
Article 40. Bank Secrecy
Bank secrecy is regulated in Chilean laws under Articles 154 of the General Banking Law and Article 1 of the Banking Current Accounts and Cheques Law. According to these regulations, the courts are empowered to decree, in the actions being heard by

them, the forwarding of information on transactions under banking secrecy the review thereof. The same power is vested in the Public Prosecutor's Office when conducting its investigations, but subject to the authorization of the Guarantee Judge.
With respect to criminal investigations brought against public officials for crimes committed in the discharge of their duties, including bribery of international public officials, the powers of the Public Prosecutor's Office in respect of current accounts are broader thatn in the general rule. It may even order full disclosure of the official's current accounts and their balances.
The powers conferred upon the Financial Analysis Unit referred to in Law No. 19,913 to prevent the use of the financial system and other economic sectors in the commission of any offense referred to in Article 27 (Investigation suspicious transactions) are another exception to the rules on banking secrecy and confidentiality. Detailed access is provided to transactions and the related information if previously authorized by a justice of the Court of Appeals of Santiago.
It should be noted that Law No. 20,119 expanded UAF powers to access a larger volume of protected information by establishing a system to lift banking and tax. To such end, procedures must be carried out to obtain the lifting of such secrecy by the Court of Appeals Santiago. It also provides access to public agencies' databases for information purposes. On the other hand, the Financial Analysis Unit is empowered to punish individuals who breach the law or the instructions issued by the said Unit.
In accordance with the provisions of Law 20,119, which amended Law 19,913, UAF can request from other entities and persons not covered by Article 3, Law No. 19,913, additional information needed to complete the analysis of a transaction previously reported or detected by said Unit in the discharge of its duties or as required to meet the request of a foreign counterparty. Should this background be secret or confidential, or should they be requested from a person not included in Article 3, Law No. 19,913, the request must firstly be granted by a justice of the Court of Appeals of Santiago. Similarly, UAF can access any existing information and material in public agencies' databases during the review of a previous suspicious transaction reported to the Unit or detected by it the discharge of its duties, should they become necessary to develop or complete the analysis of said transaction and to grant the request of a foreign counterparty. Finally, on December 5, 2009, Law No. 20,406 was published, which establishes rules allowing for access to secret or confidential banking information by tax authorities, after obtaining the authorization of ordinary courts of justice, in the case of proceedings connected with the fulfillment of tax obligations, so as to verify the accuracy or completeness of any tax returns or lack of them and to grant requests for information by foreign tax authorities under prior agreements and for exchanging information exchange aimed at avoiding double taxation.
The Public Prosecutor's Office, when conducting money laundering investigations, may obtain information about financial transactions, contracts or operations, as well as accounting information by financial and other institutions. In doing so, it must be distinguished as follows:
(a) With respect to banking transactions deemed as confidential under the law, i.e. checking accounts, deposits and placements, the Public Prosecutor's Office, in order to access such information, must obtain the authorization of the Guarantee judge. If the judge, by means of a well-founded decision, lifts the banking secrecy, according to the Banking Current Accounts and Cheques Law (art. 1) and the General Banking Law (Article 154) the scope of this authorization extends to "disclosure of certain items in the current account," or specific information regarding deposits and placements of an individual who is charged with money laundering. The rest of the financial information on banking transactions is confidential and may be accessed, according to law, if there is a legitimate interest and there is no risk of financial loss by the customer, which situation shall be determined at the discretion of the bank (Art. 154 General Banking Act). The Public Prosecutor's Office constructs this rule to the effect that in the case of investigations conducted by a prosecutor, the two foregoing requirements are met.
1. If the bank denies access to that information even if a court authorization is previously granted, the prosecutor may request the judge to send a subpoena for the said institution to provide the information within a specified period. Likewise, the judge, at the request of the prosecutor, may decree the search of premises at the branch where the financial information is located, the subpoena of the bank" and seizure of the documentation.
(b) If the prosecutor has, by means of an official letter addressed to the institution, demanded the delivery of confidential information and the institution refuses to prived it, he cannot forcefully demand its delivery, unless the request is made through a court authorization (a proper authorization or an order for exhibition of and delivery of documents in face of an eventual obstruction of justice).
(c) As to other financial records, which are not handled by banking institutions, but are of public domain or can be forwarded to the Public Prosecutor's Office (eg information from the Internal Revenue Service, which must be submitted at the request of the Prosecutor without need for a court approval), the Prosecutor may send an official letter to said institution for the delivery of such information. However, in this case, the Prosecutor has no coercive means to have the information delivered in case of refusal; in such case, the subpoena referred to above must be sent. In the case of sensitive information, i.e. information affecting the physical or moral characteristics of an individual, such as race, religion, ideology, sex life, the authorization to access such databases must be sought from the Guarantee judge.
(d) Financial information existing in public agencies' databases must be delivered at the request of the prosecutor. In case of refusal by the public agency on the grounds that such information is secret, a mechanism exists to settle the dispute between authorities in the relevant Court of Appeals. If, eventually, it is found that disclosure of information may affect national security, the Supreme Court must make said decision.
(e) Finally, miscellaneous financial information can be seized by the prosecutor, upon

authorization by the Guarantee judge of jurisdiction, during a premises search, provided that such instruments are connected with the offense under investigation, means of proof or goods that may later be subject to seizure. Documents or instruments may be seized from the accused or a third party, and a notice may be handed down before the seizure or else the seizure may be performed forthwith should this step be taken without the accused's knowledge; however, in any case, the court authorization must have been granted (Articles 180 et seq.).

It must be added that Article 28, Law No. 20,000, provides that notaries public, registrars and clerks must expeditiously provide the Public Prosecutor's Office with such reports, documents, copies of instruments and data as are requested from them, free from any kind of fees and taxes. Article 29 of the same law provides for a penalty of short-term imprisonment, medium to maximum degree, to be imposed on any person unreasonably refusing to expeditiously deliver to the prosecutor thereports, documents, copies of instruments and data requested.

The bill now pending before the Congress, and to which reference has been made, sets forth rules facilitating the delivery of secret, confidential information in money laundering investigations, allowing for larger access by the Public Prosecutor's Office, to the exntent authorized by the Guarantee judge of jurisdiction. It also contains a bill on a special regulation which explicitly states that the Public Prosecutor's Office fulfils the legal requirements to access information protected by banking secrecy, i.e. without need for a court authorization.

Seeking a court authorization to lift banking secrecy is a mechanism used in most money laundering investigations.

In this sense, there is a rule easing the use thereof, contained in Article 33 bis, Law No. 19,913, allowing for provisionally suspending an invetigation, although evidence subject to banking secrecy has been obtained (this is not permitted under the general statuts in the Criminal Procedure Code). The particular rule provides as follows:

"Notwithstanding the provisions in Article 32, where during an investigation conducted for the offenses referred to in Articles 27 and 28 of this law, information or copies of documents under banking secrecy or confidentiality are to be delivered, and in the absence of information allowing to clarify the facts, the prosecutor – notwithstanding the provisions in section 167 of the Criminal Procedure Code - may not provisionally suspend the investigation until the discovery of information further clarifying the facts."

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

At present, a bill is pending at the Chilean Congress to fully amending the Law No. 19,913. This bill is contained in Bulletin No. 4426-07, and is currently at the second constitutional stage (review by Senate). Amendments under discussion include criminalization and prosecution of the offense of money laundering, particularly as follows:

(a) increase of predicate offenses, including the list under the Customs General Ordinance, the laws on intellectual and industrial property, the Central Bank Constitutional Law, the crimes of conspiracy to commit a crime, fraud and other swindles, and crimes related to child pornography;

(b) Removal of the terms "knowingly" and "for profit";

(c) Extension of the scope of negligent money laundering acts to conducts in items (a) and (b), Article 27.

(d) Regulation of the money laundering penalty according to the penalty applicable to predicate offenses (offenses or crimes);

(e) Incorporation of a rule on allocation of funds or goods seized and confiscated to crime prevention efforts.

(f) Incorporation of a rule allowing for the seizure and confiscation of goods for "an equivalent consideration";

(g) Establishment of an administrative freezing procedure – upon instructions by UAF and subsequent court ratification – of funds associated to individuals and legal persons including on terrorist acts and terrorist financing lists prepared by Committess created under UN Security Council Resolutions No. 1267 of 1999, 1333 of 2000 and 1390 of 2002 and such supplemental or substituting resolutions as may be proper. This procedure shall be applied at the discretion of UAF and subsequent ratification by the court of jurisdiction;

(h) Authorization granted for the National Customs Service to retain a percentage of non-declared amounts when entering or leaving the country, as provided for in Article 4 of Law No. 19,913;

(i) Criminalization of a special offense (failure to report by public officials);

(j) Amendment of the rules on banking secrecy, making them more flexible and allowing for greater access by the Public Prosecutor's Office to secret, confidential information.

IV. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO PRIVATE SECTOR CORRUPTION:

LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Fight both Public and Private Sector Corruption:
Develop effective actions to fight all forms of bribery, taking into account the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or other relevant anticorruption conventions or initiatives.
Adopt and encourage measures to prevent corruption by improving accounting, inspecting, and auditing standards in both the public and private sectors in accordance with provisions of the UNCAC.
Support the recommendations of the APEC Business Advisory Council (ABAC) to operate their business affairs with the highest level of integrity and to implement effective anticorruption measures in their businesses, wherever they operate.

V. ENHANCING REGIONAL COOPERATION

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LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Strengthen Cooperation Among APEC Member Economies to Combat Corruption and Ensure Transparency in the Region:
Promote regional cooperation on extradition, mutual legal assistance and the recovery and return of proceeds of corruption.
Afford one another the widest measure of mutual legal assistance, in investigations, prosecutions and judicial proceedings related to corruption and other offences covered by the UNCAC.
Designate appropriate authorities in each economy, with comparable powers on fighting corruption, to include cooperation among judicial and law enforcement agencies and seek to establish a functioning regional network of such authorities.
Sign bilateral and multilateral agreements that will provide for assistance and cooperation in areas covered by the UNCAC. (Santiago Course of Action) These include:
Art. 44 – Extradition
Art. 46 – Mutual Legal Assistance
Art. 48 – Law Enforcement Cooperation
Art. 54 – Mechanisms for recovery of property through international cooperation in confiscation
Art. 55 – International Cooperation for Purposes of Confiscation
- Work together and intensify actions to fight corruption and ensure transparency in APEC, especially by means of cooperation and the exchange of information, to promote implementation strategies for existing anticorruption and transparency commitments adopted by our governments, and to coordinate work across all relevant groups within APEC (e.g., SOM, ABAC, CTI, IPEG, LSIF, and SMEWG).
- Coordinate, where appropriate, with other anticorruption and transparency initiatives including the UNCAC, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, FATF, the ADB/OECD Anticorruption Action Plan for the Asia Pacific region, and Inter-American Convention Against Corruption.
- Recommend closer APEC cooperation, where appropriate, with the OECD including a joint APEC-OECD seminar on anticorruption, and similarly to explore joint partnerships, seminars, and workshops with the UN, ADB, OAS, the World Bank, ASEAN, and The World Bank, and other appropriate multilateral intergovernmental organizations.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Article 44. Extradition

Overview of the extradition system in Chile:
Active Extradition: Article 431, paragraph 1, of the Chilean Code of Criminal Procedure, states that "Where, in a criminal action, an individual being abroad is accused of an offense punished with a custodial sentence of at least one year, the MINISTERIO PUBLICO will request the Guarantee Judge to remand the case to the Court of Appeals, for it to, if deemed appropriate, request the extradition of the individual from the country where the offender is actually residing." The same request may be filed by the complainant should the MINISTERIO PUBLICO fail to do it. Extradition shall also be applicable to enforce, within the country, a final judgment sentencing the person sought to a custodial sentence of at least one year." If the request for extradition is granted by the Chilean courts, a formal request shall be sent through the diplomatic channels to the authorities of the country where the sought individual is living.
This same procedure is used in the case of crimes and misdemeanors committed outside the Chilean territory and tried by the Chilean courts of justice under Article 6 of the Organic Code of Courts (numerus clausus list of Chilean extraterritorial criminal

jurisdiction). Article 6 of the Organic Court Code provides that "crimes and misdemeanors committed outside the Chilean territory, including No. 2, misappropriation of public funds, fraud and extortion, breach of duty as regards the custody of documents, breach of secrecy, bribery, perpetrated by public officials, whether Chilean or foreigner, in the service of the Republic and the bribery of foreign public officials, shall be subject to the jurisdiction of Chilean courts when committed by a Chilean citizen or a person whose habitual place of residence is located in Chile."

Passive Extradition: In the case of passive extradition, Article 449 of the Criminal Procedure Code provides that a Chilean court will grant extradition if satisfied of compliance with the following circumstances:
(a) The identity of the person whose extradition is sought;
(b) That the offense of which the individual is accused or for which he has been convicted is an extrditable offense under the treaties in force or, failing that, in accordance with the principles of international law, and
(c) That the procedural background gives rise to the presumption that an accusation is to be filed against the individual for the acts attributed to him.
Determination of the way to process a request for extradition is based directly on bilateral treaties. Chile has signed numerous bilateral treaties on extradition. In the absence of bilateral treaties, we resort to multilateral conventions signed by Chile and the country which must process a request for extradition to fill any lacunae.
In the absence of a treaty between Chile and a particular country, extradition can be sought on the basis of international laws general principles, in exchange for reciprocity. The Supreme Court's jurisprudence consider the general principles in the Bustamante Code, the Montevideo Convention of 1933 and the bilateral agreements signed by Chile on the matter as general principles.
These principles include the formulation of the request for extradition and its remittance through the diplomatic channels; the remittance of some essential documents (statement of the facts attributed to the individual and warrant of arrest, inter alia); a minimum severity of the penalty attached to the offense (at least one year of imprisonment); the inability to extradite the individual if he may face the death penalty, if the offense is political or military in nature; dual criminality; the possibility of extraditing nationals (unless otherwise prescribed by the relevant treaties); the fact that the alleged offense must have been committed abroad and that entitlement to file criminal action should not have lapsed; reciprocity in the absence of a treaty, and a test standard equivalent to "probable cause".
The processing of a passive extradition request begins with the receipt of a petiton by the Ministry of Foreign Affairs, which forwards it to the Supreme Court (art. 440). The passive extradition system in Chile authorizes the detention of the person sought (art. 446) even before receiving the formal request for extradition, under certain minimum conditions (art. 442). Upon completion of the extradition request processing, the detention may be maintained for the periods established in relevant treaties or, in the absence of a treaty, for up to two months.
Once a final judgment granting the extradition is rendered, the Supreme Court puts the indiviudal at the disposal of the Ministry of Foreign Affairs, so that he/she eis surrendered to the country seeking his/her extradition (art. 451 Criminal Procedure Code).
With regard to jurisdiction, Article 52 of the Organic Court Code provides that a Supreme Court Justice appointed by said court is qualified to hear, in the first instance, the request for the extradition, while the Criminal Division of the Supreme Court will hear the appeal.

Article 44. Extradition - Paragraph 1
Chile considers the United Nations Convention against Corruption as the legal basis for cooperation on extradition in its relations with the rest of its States Parties.

Article 44. Extradition - Paragraph 2
This paragraph does not apply since, according to Chilean law, particularly Article 449, letter (c), of the Criminal Procedure Code dual criminality is required as a condition for passive extradition.

Article 44. Extradition - Paragraph 3
According to the Supreme Court's jurisprudence, should an offense comply with the minimum severity requirement, all other related offenses, punished with a lesser penalty, are linked with the more serious one.

Article 44. Extradition - Paragraph 4
In the Chilean law, and in treaties signed by Chile, all offenses satisfying the dual criminality and a custodial sentence in excess of one year requirements are considered as extraditable offenses (art. 431 and 440, Criminal Procedure Code). Such offenses as are assigned penalties of another nature or penalties other than custodial sentences are not extraditable.
Additionally, extradition for political or military offenses, whatever the penalty assigned, is prohibited.

Article 44. Extradition - Paragraph 5
Should Chile receive a request for extradition from another State Party, with which it has no extradition treaty, Chile may hold the Convention as the legal basis for extradition in respect of offenses under Article 44 of UNCAC.

Article 44. Extradition - Paragraph 6
When depositing its UNCAC ratification instrument, on September 13, 2006, the Chilean Government provided the Depositary with the following information:

"The Government of the Republic of Chile, in compliance with the provisions of Article 44, paragraph 6, letter (a), of the United Nations Convention against Corruption does hereby inform it holds the present Convention as the legal basis for cooperation on extradition in relations with other States Parties. "
Notwithstanding the foregoing, it should be noted that Chile does not make extradition conditional on the existence of a treaty on the matter. Indeed, in the absence of a treaty, any request for passive extradition is processed and settled on the basis of the general principles of international law on extradition.

Article 44. Extradition - Paragraph 7
Chile holds UNCAC as a legal basis for cooperation on extradition matters in relation with other State Parties.

Article 44. Extradition - Paragraph 8
The grounds for rejection contained in bilateral and multilateral treaties of which Chile is a party include, inter alia, dual criminality, minimum penalty and test standard, as well as the statute of limitations and political and military nature of the offense exceptions.

Article 44. Extradition - Paragraph 9
The Criminal Procedure Code has no specific deadlines for the processing of extradition requests. However, practice has proved that the duration of an extradition procedure from the date of the initiating note from the Embassy to the remittance by the Supreme Court terminating the processing is, on average, 6 months.
Additionally, Chilean law establishes simplified measures as regards the processing of requests for extradition:
Under Article 442 of the Chilean Criminal Procedure Code, courts may order the detention of the accused even before receiving a formal request for extradition. Article 443 of the Code provides that the MINISTERIO PUBLICO will automatically represent the State in an extradition proceeding, unless a different counsel of its choice is selected. Article 449, letter (b), that there is no need for a prior extradition treaty, it being sufficient for an extradition to be carried out to observe the general principles of international law. Article 454 establishes a simplified passive extradition mechanism operating when the person whose extradition is sought – after being informed about his/her rights to formal extradition proceeding and the protection it provides, and assisted by a legal counsel - expresses to the Supreme Court Justice hearing the case his willingness to being surrendered to the requesting State. In such case, the Justice, without further delay, will grant the extradition.
As to the evidentiary requirements in the course of the extradition proceedings, Chile requires a merit review of the case before extraditing a person. The merit test is a preliminary hearing to determine the probability of a trial against the person sought. No means of proof are required; only a satisfaction standard equivalent to the one governing indictment in Chile. This means that there are sufficient reasons to convict an individual (comparable to the "probable cause" standard in Anglo-Saxon systems).

Article 44. Extradition - Paragraph 10
At the request of a State Party, in accordance with Article 442 of the Criminal Procedure Code, the Supreme Court may order the detention of the individual whose extradition is sought or else adopt any other appropriate measures to ensure the attendance of that person at extradition proceedings.
Indeed, the Code of Criminal Procedure (Article 155) provides for personal measures such as total or partial deprivation of liberty at the detainee's home or other place, subject to surveillance, regular reporting to the judge, the obligation to regularly appear before the judge, prohibitiion to leave the country, etc..

Article 44. Extradition - § 11-13
No legal or constitutional constraints are found in the Chilean for the extradition of its nationals.
Some of the international treaties ratified by Chile establish the possibility of denying the extradition of a State's own national, in which case the State is bound to prosecute the accused. This is the case of the "Convention on Extradition" signed at Montevideo on December 26, 1933 (Country Parties: Argentina, Colombia, Chile, El Salvador, United States, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Dominican Republic), and the Convention on Private International Law, 1928 (Havana Convention, which contains the Bustamante Code or Private International Law Code). Both conventions contain the principle "aut dedere aut iudicare". That is, if the requested State fails to surrender its national because of his/her nationality, it is compelled to prosecute him/her for the acts he is charged with (Article II of the Montevideo Convention and Article 345 of the Bustamante Code).
The same duty to prosecute by the requested State is established in all bilateral extradition treaties signed by Chile, upon exercise of the right not to surrender a national. Indeed, this principle is enshrined in each of these treaties, particularly in Articles referred to below: Australia (Article V, No. 1), Bolivia (art. 4), Brazil (art. 1), Colombia (art. 4)., Korea (art. 6, No. 2), Ecuador (Article VII, paragraph 2), Spain (art. 7, No. 2), Mexico (art. 6, No. 2), Nicaragua (Art. 7, No. 2), Paraguay (art. 7, paragraph 2), Peru (Article IV), Uruguay (art. 7), Venezuela (art. 3, paragraph 2), United States (art. 3).

Article 44. Extradition - Paragraph 14
The Chilean Constitution, Article 19, No. 3, contains the right to due process and its guarantees. Since the extradition process under the Chilean law is a judicial process, these guarantees are fully applicable.
Likewise, the Criminal Procedure Code, Article 10, states that "At any stage of the pro-

ceeding at which the judge finds that the accused is unable to exercise his rights under the Constitution, and the prevailing laws or international treaties ratified by Chile, he shall, ex officio or on request, adopts such measures as required for such exercise."

Article 44. Extradition - Paragraph 15
Chile has stated that it holds this Convention as the legal basis for cooperation on extradition in its relations with other State Parties; accordingly, it must comply with the provisions of this paragraph.

Article 44. Extradition - Paragraph 16
Chile has stated that it holds this Convention as the legal basis for cooperation on extradition in its relations with other State Parties; accordingly, it must comply with the provisions of this paragraph.

Article 44. Extradition - Paragraph 17
Article 443 of the Criminal Procedure Code provides that the PROSECUTOR'S OFFICE shall be immediately appointed as legal counsel of the requesting State, and that it is bound to keep it informed of all its actions.
At any time, the requesting State may designate another counsel; in such case, the intervention of the PROSECUTOR'S OFFICE will cease to intervene.

Article 44. Extradition - Paragraph 18
Chile has entered into multilateral and bilateral extradition treaties with various countries, without prejudice to the fact that the existence of such an instrument is no conditio sine qua non for the Supreme Court to proceed with a request for extradition.

1. Bilateral Treaties
Bilateral treaties were concluded with the following countries: Australia (Extradition Treaty. Signed at Canberra on 6 October 1993. Enacted by Executive Decree N °1844 RR.EE. of December 27, 1995. Official Gazette: February 20, 1996);
Belgium (Convention on Extradition. Signed in Santiago on May 29, 1899. Enacted on 03.13.1904. Official Gazette: April 5, 1904);
Bolivia (Extradition Treaty. Signed in Santiago on December 15, 1910. Enacted by Decree No. 500 of 08.05.1931. Official Gazette: 26 May 1931);
Brazil (Extradition Treaty. Signed at Rio de Janeiro, on November 8, 1935. Enacted by Decree No. 1180 of 08.18.1937. Official Gazette: 30 August 1937)
Canada (Extradition Treaty in force between Chile and Canada, with the United Kingdom of Great Britain and Northern Ireland. Signed at Santiago on January 26, 1897. Enacted on 04.14.1898. Official Gazette: 22 April 1898);
Colombia (Extradition Treaty. Signed in Bogota on November 16, 1914. Enacted by Decree No. 1472 of 12.18.1928. Official Gazette: January 7, 1929);
Korea (Extradition Treaty. Signed in Seoul on November 21, 1994. Enacted by Decree No. 1,417 of 01.09.1997. Official Gazette: 23 October 1997);
Ecuador (Convention on Extradition. Signed at Quito on November 10, 1897. Promulgated on September 27, 1899. Official Gazette: October 9, 1899);
Spain (Treaty of Extradition and Mutual Assistance in Criminal Matters. Signed on April 14, 1992. Enacted by Executive Decree RR.EE. No. 31 of 10.01.1995. Official Gazette: April 11, 1995);
United States (Treaty for the Extradition of Criminals. Signed in Santiago, April 17, 1900. Official Gazette: August 11, 1902. Additional Protocol to the Extradition Treaty. Signed in Santiago on June 15, 1901. Enacted on 06/08/1902. Official Gazette: August 11, 1902);
Mexico (Treaty of Extradition and Mutual Legal Assistance in Criminal Matters. Signed in Mexico City, on October 2, 1990. Enacted by Executive Decree N° 1,011 of RR.EE. of 30.08.93. Official Gazette: 11.30.93);
Nicaragua (Treaty on Extradition and Mutual Legal Assistance in Criminal Matters. Signed in Santiago on December 28, 1993. Enacted by Executive Decree No. 411 RR.EE., 8.6.2001. Official Gazette: 20.08.2001);
Paraguay (Treaty on Extradition. Signed in Montevideo on May 22, 1897. Official Gazette: November 13, 1928);
Peru (Extradition Treaty. Signed in Lima on November 5, 1932. Enacted by Decree No. 1152 of 08.11.1936. Official Gazette: August 27, 1936);
United Kingdom (Treaty on Extradition. Signed in Santiago on January 26, 1897. Enacted on 14.04.1898. Official Gazette: April 22, 1898. (Art. XVII "The provisions of this Treaty shall apply to the Her Majesty's outer Colonies and possessions, as permitted by the laws of such outer Colonies and possessions ... ").
Uruguay (Treaty on Extradition. Signed in Montevideo on May 10, 1897. Official Gazette: November 30, 1909);
Venezuela (Extradition Treaty. Signed in Santiago on June 2, 1962. Enacted by Executive Decree No. 355 RR.EE. 05.10.65. Official Gazette: June 1, 1965).

2. Multilateral
Chile is also a State party to the following multilateral treaties on extradition or containing rules on extradition:
Convention on Extradition. Signed at Montevideo on December 26, 1933. Enacted by D.S. RR.EE. No. 942 of 06.08.1935. Official Gazette: 19.8.1935. Country Parties: Argentina, Colombia, Chile, El Salvador, United States, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Dominican Republic. Convention on Private International Law, 1928 (Havana Convention, which contains the Bustamante Code or Private International Law Code) (Title III, Book IV). Country Parties: Bolivia, Brazil, Chile, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Peru, Dominican Republic, Venezuela. Articles 344-381 of this Code contain provisions on extradition in criminal

proceedings, as is the case of requests by several Contracting States, dual criminality, inadmissibility of the extradition of nationals, the severity of penalty (at least one year), exclusion of political offenses, the principle of specialty, procedures, and expenditures.

Article 46. Mutual legal assistance - Paragraphs 1 to 3

Chile provides legal assistance on the basis of multilateral and bilateral treaties signed, the principles of international law and, particularly, the rules of international reciprocity. The Convention will also be held as a basis for such assistance.

Chile provides assistance for all UNCAC offenses. For legal assistance, there is no dual criminality requirement; therefore, assistance can be provided on all types of offenses, although not existing in Chile. Our country also provides assistance with respect to offenses for which a legal person may be held liable in the requesting State Party, without need for liability being established under the Chilean law. The main requirement for the enforcement of requests is that the act required is in accordance with Chilean law.

Mutual legal assistance is provided for all proceedings, investigations, actions and judicial proceedings. The presence of requesting country's officials in the enforcement of the application is accepted. For example, when taking a witness deposition, the presence of the requesting State's officials is permitted and the questions made by them are taken into account, although questions are made by Chilean officials. Chilean legislation on mutual legal assistance is limited only to the general rules contained in two articles of the Criminal Procedure Code. Article 20 bis of the Criminal Procedure Code deals with the processing of requests for international assistance, and states: "Applications filed to competent authorities of foreign countries in order for steps to be taken in Chile shall be immediately remitted to the MINISTERIO PUBLICO, which shall seek the intervention of the relevant Guarantee Judge where the nature of the proceedings so require in accordance with the provisions of Chilean law." Furthermore, Article 21 of the Criminal Procedure Code sets the way to carry out communication. It states: "Communications set in the foregoing articles may be carried out by any suitable means, without prejudice to subsequent submission of the relevant documentation." Threfore, UNCAC relevant provisions can be applied directly, except for measures involving restriction or deprivation of rights guaranteed by the Constitution, which require prior authorization by a Chilean court.

Applications for passive extradition must be addressed to Chile usually through the diplomatic channels, which then submit them to the relevant central authority (Ministry of Foreign Affairs). If so provided in a treaty, the application may be addressed directly to the central authority and later by the diplomatic channels. The central authority transmits the same to the enforcement authority under the Chilean law. Most requests are enforced by the Prosecutor's Office or the Police; only if the step involves a restriction of rights the request will be forwarded to the Guarantee judge. For instance, measures to be enforced by the judge include seizure of goods, search of premises or tapping of telephone conversations. In contrast, general information on the financial standing of an individual requires no court authorization.

As regards requests for active extradition, it depends on whether a treaty provides for the direct contact between central authorities. If not, Chile conveys the request through the diplomatic channels. Close cooperation exists between the Ministry of Foreign Affairs and the Prosecutor's Office. At the Embassies, officials work that are specially trained for direct communication with the authorities of other States.

Similarly, most applications which do not include restriction of rights are enforced by Interpol and its red alerts are not considered as self-executing; rahter, they require the consent of a Chilean judge.

Chile has concluded the following treaties on judicial cooperation in criminal matters:

a) Bilateral:

- Spain: Treaty on Extradition and Mutual Legal Assistance in Criminal Matters. Signed on April 14, 1992. Enacted by D.S. RR.EE. No. 31 of 10.1.1995. Official Gazette: April 11, 1995
- Mexico: Treaty on Extradition and Mutual Legal Assistance in Criminal Matters. Signed in Mexico City, on October 2, 1990. Enacted by D.S. RR.EE. No. 1011 of 30.8.93. Official Gazette: 30.11.93.
- Nicaragua: Extradition and Mutual Legal Assistance in Criminal Matters. Signed in Santiago on December 28, 1993. Enacted by D.S. RR.EE. N° 411, 8.6.2001. Official Gazette: 20.8.2001. - Uruguay: Agreement on the Exchange of Criminal Records, signed in Montevideo on April 15, 1981. Executive Decree No. 287 of 1982. Official Gazette of 26 May 1982.

b) Multilateral:

- Inter-American Convention on Mutual Assistance in Criminal Matters. Adopted at Nassau, Bahamas, on 23.5.92 and its Optional Protocol, signed in Managua on 11.6.93. D.S. RR.EE. No. 108 of 04/05/04. Official Gazette dated 8.7.2004. Country Parties to the Convention as at 11.5.2006: Canada, Chile, Colombia, Dominica, Ecuador, El Salvador, United States, Grenada, Guatemala, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago and Venezuela. Countries party to the protocol (as at 13/07/04): Chile, Colombia, Ecuador and the United States.
- Agreement on Mutual Legal Assistance in Criminal Matters between the Member States of MERCOSUR and the Republic of Bolivia and the Republic of Chile, adopted in Buenos Aires, Argentina, on February 18, 2002. Enacted by D.S. RR.EE. No. 78 of 7 May 2009, published in the Official Gazette of 17 October 2009. (No. 52 of MERCOUSR List of Treaties).
- United Nations Convention against Transnational Organized Crime and its Protocols, November 15, 2000 (Palermo Convention). D.S. RR.EE. No. 342 of 20.12.04. Official Gazette of 16.2.05.

Article 46. Mutual Legal Assistance - Paragraph 4 and 5

With respect to the transmission of information other than upon prior request, Chile applies the same rules that deal with mutual legal assistance in general. No interna-

tional treaty that provides for the transmission of information is required.
As to the procedure, the same procedure as in reciprocal legal assistance in general is followed: The Public Prosecutor's Office sends the information to the central authority and the latter shares it with the central authority of the other country (or through diplomatic channels, if applicable .)
Additionally, Chile forms part of several networks and institutions informally exchanging relevant information on criminal proceedings, as Interpol or IberRed.

Article 46. Mutual Legal Assistance - Paragraph 6
As already mentioned, Chile is a party to several bilateral or multilateral treaties governing reciprocal legal assistance. Chile considers that such treaties are not affected by the rules of the Convention.

Article 46. Mutual Legal Assistance - Paragraph 7
Paragraphs 9 to 26, Article 46, are considered applicable to requests made between Chile and a State party to UNCAC, in the absence of a treaty on reciprocal mutual legal assistance between them.

Article 46. Mutual Legal Assistance - Paragraph 8
Banking secrecy is not a ground allowing Chile, due to its domestic laws, to deny mutual legal assistance (Article 154 of the General Banking Act and Article 1 of Law on Banking Checking Accounts and Checks). However, to lift the banking secrecy, Chilean laws require that court approval is sought, after formal request by the Public Prosecutor's Office.

Article 46. Mutual Legal Assistance - Paragraph 9
Chile does not limit or condition the provision of mutual legal assistance upon dual criminality, as Articles 20 bis and 21 of the Procedure Code and the relevant treaties fail to set said requirement.

Article 46. Mutual legal assistance - Paragraphs 10-12
The conditions and guarantees laid down in UNCAC paragraphs 10 to 12, Article 46, are applicable to requests between Chile and a State party to UNCAC, in the absence of a bilateral legal assistence agreement governing the transfer of persons in detention or serving a sentence for identification purposes, or for taking witness testimony or assisting in legal investigations, proceedings or formalilties in relation to offenses covered by UNCAC.

Article 46. Mutual Legal Assistance - Paragraph 13
At the time of depositing its Convention ratification instrument - September 13, 2006 – Chile designated the Ministry of Foreign Affairs as the Central Authority for receiving requests for mutual legal assistance. The role of central authority is played by the Department of International Legal Cooperation, Directorate of Legal Affairs (DIJUR), of the Ministry. The Ministry of Foreign Affairs is also the central authority in most other international treaties ratified by Chile.

Article 46. Mutual Legal Assistance - Paragraph 14
At the time of depositing its Convention ratification instrument - 13 September 2006 – Chile informed the Secretary General of the United Nations that Spanish is the accepted language for the purposes of requests.
In urgent cases, informal requests are accepted, such as by fax and email; however, they must always be formalized by means of an official communication.

Article 46. Mutual Legal Assistance - Paragraph 15
Chile has complied with all the requirements of paragraph 15, Article 46, in its requests for mutual legal assistance. Consequently, it requires that any requests made to it also comply with them.

Article 46. Mutual Legal Assistance - Paragraph 16
Chile requests all such additional information as is necessary for the full and proper execution of the request for international legal assistance. Chile constructs international cooperation in legal matters broadly, facilitating and easing its relations with other States. There are no specific regulations or deadlines for the execution of the request for additional information.

Article 46. Mutual Legal Assistance - Paragraph 17
Chilean laws afford individuals certain rights, such as freedom of movement and respect for privacy, which cannot be restricted or affected without the authorization of a Chilean court of jurisdiction. In this regard, if a request for international legal assistance asks for the taking of a step that might affect such rights, it cannot be processed by the administrative channels as originally required, unless with a Chilean court decree expressly authorizing such step.
For example, international warrants of arrest issued by a foreign court or Prosecutor's Office are not self-executing in Chile, but must first be subject of a court warrant authorizing its enforcement. In these cases, the Chilean Prosecutor's Office is responsible for seeking scuh decree from the Chilean courts.

Article 46. Mutual Legal Assistance - Paragraph 18
Chile has the legal and material possibility of conducting hearings by means of an international videoconference in criminal proceedings in Chile, and take part in a criminal action abroad by means of a videoconference.

Article 46. Mutual Legal Assistance - Paragraph 19
Chile strictly adheres to the principle of specialty enshrined in this paragraph. Concerning the elements acquitting an accused person, Chilean laws impose an obligation by the prosecuting agency, in a criminal action, to act under the principle of objectivity, that is, investigating the circumstances that establish both the guilt and the innocence of an individual. In this regard, should there be any means of proof or background information to lessen his/her guilt or innocence, it is the duty of the Prosecutor's Office to transmit this information to the competent authorities.

Article 46. Mutual Legal Assistance - Paragraph 20
Although there is are no express regulations of the principle of confidentiality about the existence and contents of a request, this principle would apply pursuant to the Convention.

Article 46. Mutual legal assistance Paragraph 21, 22 and 23
According to the above, the grounds for refusal of mutual legal assistance by Chile are restricted to the grounds contained in bilateral or multilateral mutual legal assistance treaties and cases in which the proceedings are contrary to the Chilean domestic law. The refusal is decided by the institution responsible for the execution of the request.

Article 46. Mutual Legal Assistance - Paragraph 24
Chilean internal laws fail to contain specific provisions on deadlines for the enforcement of a request; however, experience proves that they are expeditiously processed, even omitting unnecesary formalities. The Convention, on the other hand, is a legal basis to timely process a request.

Article 46. Mutual Legal Assistance - Paragraph 25
Chilean laws or rules applicable treaties fail to establish a peremptory deadline to reply; so the time or opportunity to answer may vary depending on the circumstances of the case.

Article 46. Mutual Legal Assistance - Paragraph 26
Chile does not deny requests for legal assistance in criminal matters, unless expressly contrary to general principles of international law.

Article 46. Mutual Legal Assistance - Paragraph 27 and 28
Without prejudice to the Convention being the legal basis for enforcing these provisions, Chile signed the "Agreement on Mutual Legal Assistance in Criminal Matters between the Member States of MERCOSUR, the Republic of Bolivia and the Republic of Chile", which Article 19 ("Transfer of persons subject to criminal proceedings") contains rules similar to those of these paragraphs.
In the absence of a specific treaty, the general rules of the Convention apply.
Article 46. Mutual Legal Assistance - Paragraph (a) of Paragraph 29
In the light of the foregoing, Chile provides all information available in accordance with its domestic laws.

Article 46. Mutual Legal Assistance - Paragraph 30
As noted above, Chile is a State party to several bilateral and multilateral agreements on mutual legal assistance.

Article 48. Cooperation in law enforcement - Paragraph 1
(1) Financial Analysis Unit (UAF)
Letter (g) of Law 19,913 (http://www.leychile.cl/Navegar?idNorma=219119&buscar=19913) empowers UAF to exchange information with their counterpartiess abroad, on the basis of reciprocity, such information not being used purposes other than those provided for. The Art. 2, letter (g), of Law No. 19,913 states: "To exchange information with their counterparties abroad. To this end, the unit shall ensure that such information is not used for different purposes and that the requesting entity act in reciprocity should information be requested from it." Exchange of information is formalized by the subscription of a Memorandum of Understanding, a legal instrument establishing the conditions and requirements to be met every time information is requested from FIU. Information obtained by the UAF in the discharge of its duties shall abide by the provisions of Art. 2, paragraph 2, Law No. 19,913: "In no respect, the Financial Analysis Unit may exercise powers proper to the Pubic Prosecutor's Office or the courts of justice. Additionally, it can only use the information received for the purposes stated in this law, and, in no case, will it disclose it to agencies or services other than the Public Prosecutor."
To date, this Financial Analysis Unit hase entered into 39 Memoranda of Understanding (MOU in English) with foreign counterparties, namely Peru, Cayman Islands, Paraguay, Aruba, Bolivia, Netherlands Antilles, Argentina, Cyprus, Australia, Liechtenstein, Guatemala, United Kingdom, The Netherlands, Brazil, Bermuda, Spain, Belgium, Poland, Saint Vincent and the Grenadines, Slovenia, Malaysia, Korea, Ecuador, Mexico, El Salvador, Panama, Luxembourg, France, Thailandia, Romania, Gibraltar, Switzerland, Colombia, Guernsey, Venezuela, Canada, Japan, and Germany).
The UAF has a database, adequately protected, on suspicious transactions reports received, reports on cash transactions and statements of cash transported through border posts. UAF may receive from its foreign counterparties requests for information available in its database, using the secure network for information exchange - Egmont Group, for member countries and jurisdictions. (UAF is a member of the Egmont Group since October 2004) - or, if the other institution is not a member of the Egmont Group, by means of a request transmitted on the basis of a signed bilateral MoU. During 2011, UAF received 57 requests, 15 of which were not from Egmont members, but came from

Bolivia. In 2012, 9 requests have been received so far, 8 of via Egmont and one from Bolivia, under the MoU signed between both Units. With regard to the Chilean UAF's, in 2011, 66 requests for information were made to its counterparties abroad and in 2012, to this date, 24 requests have been filed, mainly to neighboring countries and the United States.

(2) National Coordination to Prevent and Combat Money Laundering
At the Commission's level, several agreements on cooperation were concluded between the Commission of Banks and Financial Institutions and supervisory agencies in Spain, Argentina and three supervisors in the United States. The Commission is also a member of "Asociación de Supervisores de Bancos de las Américas" (ASBA) and has an active, direct relation with the Basil Committee. The Commission of Securities and Insurance has signed cooperation agreements with Peru, Colombia, Mexico, Argentina, Costa Rica, Paraguay, Spain, Ecuador, Thailand, Brazil, Quebec, United Kingdom, El Salvador, Malaysia, South Africa, Taiwan, France, Bolivia, Portugal, United States, Dominican Republic, Panama, and Luxembourg. The Memoranda of Understanding are agreements on cooperation and technical assistance, information exchange and consultation between securities regulators. The Commission is also an active member of international bodies setting supervision and control standards of securities and insurance markets, namely IOSCO (International Organization of Securities Commissions), IIMV (Institutio Iberoamericano de Mercados de Valores), COSRA (Council of Securities Regulators of the Americas), IAIS (International Association of Insurance Supervisors); ASSAL (Association of Supervisors) and OECD Working Groups and others.
(3) Customs: Internationally, Chilean Customs exchanges information with third countries Customs as part of the commitments made in agreements signed by Chile: (1) RILO (Regional Intelligence Liaison Office). RILO network – which South American headquarters are located in Chile (Valparaiso) - has 11 offices (Western Europe, Middle East, Asia/Pacific, CIS Countries, Russia, Central Africa, Eastern Europe), whose primary object is to generate customs intelligence and analysis, at a global level, to prevent customs offenses of all kinds, including money laundering; (2) Customs Enforcement Network (CEN) is a non-nominal database for information exchange between Customs. It also enables a customs service to exchange information, whether nominal or specific, with one or more customs, where so agreed. The Chilean customs has taken part in several joint exercises or operations, inter alia, on drug matters; (3) Additionally, Chile is a State party to bilateral and multilateral customs cooperation agreements, inter alia, with Mercosur, the European Community, Ecuador, Bolivia, Peru, the Republic of Korea, The Netherlands, the Russian Federation and Poland.
(4) Chilean Investigative Police (PDI): The Chilean Investigative Police conducts investigations in conjunction with the police in other countries, within the framework of international cooperation to combat illicit drug trafficking and the organized crime, sharing diverse feedback mechanisms and expanding knowledge for future money laundering investigations. In this area, by way of illustration, some investigations conducted by the Money Laundering Investigation Squad (BRILAC in Spanish) are mentioned, which required international exchange and cooperation from the police and other authorities, the results of which were made public both nationally and internationally ("European Sigh" case - Clan MAZZA - Money Laundering, between DEA (USA), National Police (Colombia), National Police (Peru); "Samex" case - Patricio Galmez - Money Laundering, between BKA (Germany) and the Netherlands Police.) The Police Unit cooperates by maintaining permanent contact with Interpol.

Article 48. Cooperation in law enforcement - Paragraph 2
The Chilean Prosecutor's Office has signed several instruments with similar institutions in other countries to further international legal cooperation. These instruments include agreements and Memoranda of Understanding with all the Public Prosecutor's Offices in Latin America and other States, pertaining to three categories: Inter-agency cooperation agreements, information exchange protocols, and protocols on surveilled deliveries in drug trafficking investigations. Article 48. Cooperation in law enforcement - Paragraph 3
Other examples proving compliance with this provision include the exchange of information by UAF and the Investigative Police in safehouses provided by the Egmont Group and Interpol. Additionally, the UAF has recently improved its computer system (database and data analysis) to have a clearer view of money laundering and information networks.

VI. OTHER APEC ACT LEADERS' AND MINISTERS' COMMITMENTS

LEADERS' AND MINISTERS' COMMITMENTS

2005: Ministers encouraged all APEC member economies **to take all appropriate steps towards effective ratification and implementation, where appropriate, of the United Nations Convention against Corruption (UNCAC)**. Ministers encouraged relevant APEC member economies to make the UNCAC a major priority. They urged all member economies to submit brief annual progress reports to the ACT Task Force on their APEC anti-corruption commitments, including a more concrete roadmap for accelerating the implementation and tracking progress. (See Section I Above, UNCAC)
2006: Ministers underscored their commitment **to prosecute acts of corruption, especially high-level corruption by holders of public office and those who corrupt them. In this regard, Ministers commended the results of the Workshop on Denial of Safe Haven:**

Asset Recovery and Extradition held in Shanghai in April 2006. Ministers agreed to consider developing domestic actions, in accordance with member economy's legislation, to deny safe haven to corrupt individuals and those who corrupt them and prevent them from gaining access to the fruits of their corrupt activities in the financial systems, including by implementing effective controls to deny access by corrupt officials to the international financial systems.

2007: We endorsed a model **Code of Conduct for Business, a model Code of Conduct Principles for Public Officials and complementary Anti-Corruption Principles for the Private and Public Sectors.** We encouraged all economies to implement these codes and welcomed agreement by Australia, Chile and Viet Nam to pilot the Code of Conduct for Business in their small and medium enterprise (SME) sectors. (AELM, AMM)

2008: We commended efforts undertaken by member economies to develop comprehensive anti-corruption strategies including efforts to restore public trust, ensure government and market integrity. We are also committed **to dismantle transnational illicit networks and protect our economies against abuse of our financial system by corrupt individuals and organized criminal groups through financial intelligence and law enforcement cooperation related to corrupt payments and illicit financial flows.** We agreed to further strengthen international cooperation to combat corruption and money laundering in accordance with the Financial Action Task Force standards. International legal cooperation is essential in the prevention, investigation, prosecution and punishment of serious corruption and financial crimes as well as the recovery and return of proceeds of corruption. (AELM, AMM)

2009: We welcome the Anti-Corruption and Transparency Experts' Task Force's **Singapore Declaration on Combating Corruption, Strengthening Governance and Enhancing Institutional Integrity, as well as the APEC Guidelines on Enhancing Governance and Anti-Corruption**. We encourage economies to implement measures to give practical effect to the Declaration and Guidelines. (AMM)

2010: We agreed to leverage collective action **to combat corruption and illicit** trade by promoting clean government, fostering market integrity, and strengthening relevant judicial and law enforcement systems. We agreed to deepen our cooperation, especially in regard to discussions on achieving more durable and balanced global growth, increasing capacity building activities in key areas such as combating corruption and bribery, denying safe haven to corrupt officials, strengthening asset recovery efforts, and enhancing transparency in both public and private sectors. We encourage member economies, where applicable, **to ratify the UN Convention against Corruption and UN Convention against Transnational Organized Crime and to take measures to implement their provisions, in accordance with economies legal frameworks to dismantle corrupt and illicit networks across the Asia Pacific region. (AELM, AMM)**

ECONOMY: P.R.China
CALENDAR YEAR: 2012
LAST UPDATED: 2012

LEADERS' AND MINISTERS' COMMITMENTS

- **2010**: We agreed to enhance our efforts to improve transparency and eliminate corruption, including through regular reporting via ACT and other relevant fora on economies' progress in meeting APEC Leaders' commitments on anti-corruption and transparency.
- **2006:** Ministers endorsed APEC 2006 key deliverables on Prosecuting Corruption, Strengthening Governance and Promoting Market Integrity and encouraged member economies to take actions to realize their commitments. Ministers also encouraged all economies to complete their progress reports on the implementation of ACT commitments by 2007. Ministers welcomed APEC efforts to conduct a stocktaking exercise of bilateral and regional arrangements on anti-corruption in cooperation with relevant international and regional organizations, and encouraged member economies to fully participate in the stocktaking activities.

Objective: Where appropriate, to self-assess progress against APEC Leaders' and Ministers' commitments on anti-corruption, transparency, and integrity and to identify capacity building needs to assist the ACT to identify priority areas for future cooperation.

EXECUTIVE SUMMARY

1. Summary of main achievements/progress in implementing the commitments of APEC Leaders and Ministers on anti-corruption, transparency, and integrity since 2004.
Since 2004, China has placed in a more prominent position the work of combating corruption and building a clean government, adopted the principle of addressing both symptoms and root causes of corruption, enforcing comprehensive treatment, giving simultaneous stresses to punishment and prevention while giving priority to prevention, and establishing the national anti-corruption strategy by setting up and perfecting a system of punishment and prevention of corruption to comprehensively promote this undertaking. In work arrangement, stress has been given to strictly investigating and punishing all violations of the law and discipline, earnestly handling problems concerning leading cadres' honesty and self-discipline, resolutely rectifying malpractices that bring damage to the people's interests, enacting and improving laws and systems on combating corruption and building a clean government, and making great efforts in promoting reforms in major areas and key links. The National Bureau of Corruption Prevention of China has been established to take over-all responsibility for the anti-corruption work in all aspects. Efforts are being made to raise the ethical standards of citizens and foster a culture of integrity so as to foster values and concepts upholding integrity among the public. Such values are being promoted in rural areas, enterprises, schools, public institutions, and urban communities, and the mechanism of risk prevention and control related to combating corruption is being established. In combating corruption and building a clean government, China is more explicit in direction, clearer in thought, and more effective in measures. A new way of combating corruption and building a clean government that con-forms to China's national conditions and displays Chinese characteristics has taken shape. According to a survey by the National Bureau of Statistics of China, from 2003 to 2011, Chinese citizens' rate of satisfaction with the work of combating corruption and building a clean government rose steadily from 51.9% to 72.7%, and from 2003 to 2010, the percentage of citizens who thought corruption had been kept down to varying extents increased from 68.1% to 83.8%. Moreover, the efforts China has made in this regard have got positive comments from the international community.

2. Summary of forward work program to implement Leaders' and Ministers' commitments.
We are formulating China's next five-year anti-corruption work plan (2012-2018) to push forward the efforts of corruption prevention and punishment, with the emphasis on reform and institutional innovation.

3. Summary of capacity building needs and opportunities that would accelerate/strengthen the implementation of APEC Leaders' and Ministers' commitments by your economy and in the region.

I. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO UNCAC PROVISIONS

LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Take All Appropriate Steps Towards Ratification of, or Accession to, and Implementation of the UNCAC:

- Intensify our efforts to combat corruption and other unethical practices, strengthen a culture of transparency, ensure more efficient public management, and complete all appropriate steps to ratify or accede to, and implement the UNCAC.
- Develop training and capacity building efforts to help on the effective implementation of the UNCAC's provisions for fighting corruption.

- Work to strengthen international cooperation in preventing and combating corruption as called for in the UNCAC including extradition, mutual legal assistance, the recovery and return of proceeds of corruption.

I.A. Adopting Preventive Measures (Chapter II, Articles 5-13)

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RELEVANT UNCAC PROVISIONS

Chapter II, Articles 5-13 including:

- Art. 5(2) Establish and promote effective practices aimed at the prevention of corruption.
- Art. 7(1) Adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials that:
  - Are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;
  - Include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;
  - Promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;
  - Promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions.
- Art. 7(4) Adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.
- Art. 8(2) Endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.
- Art. 8(5) Establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials. Art. 52(5)/(6) [sharing the information on the financial disclosures that should be in place]
- Art. 10(b) Simplify administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities.
- Art. 12(2)(b) Promote the development of standards and procedures designed to safeguard the integrity of private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State.
- Art. 12(2)(c) Promote transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities.
- Art. 13(1) Promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Promoting the reform of the cadre and personnel system. China adheres to the principles of democracy, openness, competition and merit in establishing a scientific mechanism for selecting and appointing cadres as well as a management and monitoring mechanism in this regard, aiming at increasing public trust in its selection and appointment of cadres, and preventing and combating corruption at the very source in appointing cadres. By issuing in succession the Guidelines for Deepening Reform of the Cadre and Personnel System, Regulations on the Work of Selecting and Appointing Leading Party and Government Cadres, Supervisory Measures for the Selection and Appointment of Leading Party and Government Cadres (Trial), and Accountability Measures for the Selection and Appointment of Leading Party and Government Cadres (Trial), the CPC has drawn up a comprehensive plan for reforming the cadre and personnel system, made rigorous stipulations regarding basic principles, standards, procedures and methods for the selection and appointment of cadres, and tightened supervision over the work of cadre selection and appointment. We stick to the standards of political integrity and professional competence, with the former being the most important. We comprehensively press ahead with such systems as democratic recommendation and assessment, opinion polls, preliminary investigation report, public announcement before appointment, as well as systems of exchange of posts and recusal for cadres, and vigorously promote open selection and competition for posts, and spread and improve the system of appointing cadres to important positions by local Party commit-tees through voting.

Deepening the reform in the system of administrative examination and approval. The Chinese government has been going all out to push forward reform in the system of administrative examination and approval, and speed up the separation of the functions of government from those of enterprises, state asset management authorities, public institutions and market-based intermediaries to accelerate the transformation of the functions of the government. On the

basis of comprehensively sorting out matters requiring administrative examination and approval, the state has sharply reduced or adjusted such matters. Since the reform of the administrative examination and approval system was launched in 2001, various departments of the State Council have cancelled and adjusted over 2,000 items requiring administrative examination and approval, and the local governments cancelled and adjusted in total over 77,000 items which used to come under this heading. The two numbers of items added up to over half of the former total of such items. As for the rest of the items, administrative service centers have been extensively set up to openly examine and approve them, an electronic monitoring system has been established to promptly monitor such examination and approval, and an accountability sys-tem and an information feedback mechanism have been established to enhance work efficiency and reduce the possibility of rent-seeking act of power.

Building and improving a system to prevent conflicts of interest. The Guidelines of the Communist Party of China for Party-member Leading Cadres to Perform Official Duties with Integrity, revised in 2010, clearly prohibit Party-member leading cadres engaging in profit-making activities and seeking illegitimate gains by taking advantage of their positions and power in violation of the established rules. The Guidelines have provided relatively comprehensive regulations on Party-member leading cadres in per-forming their official duties with integrity under the conditions of the socialist market economy. In view of the new situation and problems arising in power-for-money cases, the CPC promulgated the Regulations of the Central Commission for Discipline Inspection of the Communist Party of China on the Strict Prohibition of Seeking Illegitimate Gains by Misuse of Office in 2007, specifying methods of handling eight types of misconduct of Party-member cadres, including abuse of power for personal gain, which might appear during economic and social interactions. The Regulations on the Executives of State-owned Enterprises for Performing Management Duties with Integrity (Trial) released in 2009 clearly prohibit leading officials of state-owned enterprises to seek profit through misuse of office for either themselves or any related parties, undermine the interests of the enterprises. To regulate leading cadres' performance of official duties with integrity, a number of regulations have been promulgated, including the Regulations on Implementing the System of Registration for Gifts Received in Domestic Social Activities by Functionaries of Party and State Organs, which clearly demand that the functionaries of Party and state organs must not accept any gifts or grants that might influence their impartial performance of official duties; the Regulations on Leading Cadres' Report of Relevant Personal Matters, which requires leading cadres to honestly report their incomes, housing and investment owned or made either by themselves or together with their spouses and children living with them, as well as the employment status of their spouses and children; and the Interim Regulations on Strengthening Management of State Functionaries Whose Spouses and Children Have Emi-grated Abroad. These regulations play an important role in safe-guarding the national interests and in the management of Party members and state functionaries in accordance with the law, as well as in enhancing the sense of leading cadres in performing their official duties with integrity.

Improve the citizen participation mechanism and support the social and public efforts to combat and prevent corruption. First is to develop the education on building a clean government throughout the society. More attention is paid to combine the ideological education, disciplinary education, social morality, professional ethics, family virtue education with legal education and more efforts are put on the cultural construction of building a clean government. Second is to promote the transparent system of government, factory and village affairs, and establish and improve the working mechanism to enable the organized participation of the public in combating and preventing corruption. We improve the mechanism of the citizens' participation in the fight against corruption by establishing and perfecting the reporting and complaining system, the news release system and the specially invited supervisor and procurator system in the supervision and prosecuting organs. These systems can support the well-organized participation in the anti-corruption work of the citizens on multiple dimensions.

China has launched the campaign of preventing and controlling risks of clean governance so as to regulate the exercise of public power and enhance its supervision by the principle of clear demarcation, legitimate exertion and open exercise. The identification of loopholes in laws and regulations as well as during the legislation process will prevent the institutionalization of small group interests and the legitimization of illegal rights and therefore, provides the possibility for eliminating fundamental conditions for corruption from the institutional level. We are also engaged in promoting the establishment of the social credit management system based on citizens' ID number and the further development of an honest civil society. In terms of anticorruption initiative in the social sector, we are in the process of drafting a national guideline on combating and preventing corruption in the social sector. Pilot projects are carried out in selected non-public economic entities to explore effective measures against corruption in this area. Providing guidance to the orderly participation of society in our corruption prevention efforts is another core task.

I. B. Criminalization and Law Enforcement (Chapter III)

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RELEVANT UNCAC PROVISIONS

- Art. 15 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
  - The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
  - The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.
- Art. 16(1) Adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally,
the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage,
for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.
- Art. 17 Adopt measures to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.
- Art. 20 Adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.
- Art. 21 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:
  - The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;
  - The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.
- Art. 27(1) Adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Laws and regulations related to criminal punishment. Several offences of criminal crimes may be committed in business bribery within China's jurisdiction, which punish not only bribe-takers, but also bribe-givers and bribe-panders, e.g. Article 163,Criminal Law (acceptance of a bribe by an employee of a company or enterprise), Article 164(offer a bribe to an employee of a company or enterprise, a foreign public official or a official of an international organization), Article 385(acceptance of a bribe), Article 387(acceptance of a bribe by a unit), Article 388 (acceptance of a bribe by taking advantage of any other state functionary's power or position), Article 389 (offer a bribe), Article 391 (offer a bribe to a unit), Article 392 (introduce bribery), Article 393 (prosecution of bribery by a unit).

Article395, Criminal Law (Crime of huge indentified property): Any state functionary whose property or expenditure obviously exceeds his lawful income, if the difference is enormous, may be ordered to explain the sources of his property. If he cannot prove that the sources are legitimate, the part that exceeds his lawful income shall be regarded as illegal gains, and he shall be sentenced to fixed-term imprisonment.
Article3982, Criminal Law (Crime of embezzlement): Any State functionary who, by taking advantage of his office, appropriates, steals, swindles public money or property or by other means illegally take it into his own possession shall be guilty of embezzlement.

During the past three years, to ensure the effective implementation of the United Nations Convention Against Corruption, the Chinese legislature has passed the Seventh Amendment to the Criminal Law of the People's Republic of China, which establishes trading-in-influence as a criminal offence and amends the criminal offence of illicit enrichment, and the Eighth Amendment to the Criminal Law of the People's Republic of China, which establishes as a criminal offence of bribery the giving to a foreign public official or an official of a public international organization of property in order to obtain undue business advantage, which has provided a legal ground for fighting

transnational (cross-border) corruption including business bribery. In a new regulation issued by the Supreme People's Procuratorate and Ministry of Public Security in November 2011, it stipulates the standards of filing and prosecuting economical cases involving the offer of a bribe to any foreign public official, or any official of an international public organization. The Amendment to the Criminal Procedure Law of the People's Republic of China that will take effect as of January 1st 2013 adds provisions on the procedure of confiscating illegal income, thus providing legal foundation for asset recovery upon the flight of corrupt offenders.

I.C. Preventing Money-Laundering

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RELEVANT UNCAC PROVISIONS

- Art. 14(1) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons, that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering.
- Art. 14(2) Implement feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders.
- Art. 14(3) Implement appropriate and feasible measures to require financial institutions, including money remitters, to:
  - (a) include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;
  - (b) maintain such information throughout the payment chain; and
  - (c) apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

In 2006, the Law of the People's Republic of China on Anti-money Laundering was promulgated to prevent and contain money laundering and relevant crimes. The financial institutions and the special non-financial institutions that are required by relevant regulations to perform the obligation of anti-money laundering shall, in accordance the law, adopt preventive and monitoring measures by establishing sound systems for distinguishing clients' identities, preserving the data for clients' identities and records of transactions, and a report system for transactions involving large sums of money and for dubious transactions, and thus perform their anti-money laundering obligation. The People's Bank of China has set up a domestic anti-money laundering work mechanism with other financial monitoring departments. This work mechanism aims to plan and coordinate the anti-money laundering work in the financial industry, combine the efforts of banking, security, insurance and foreign exchange monitoring agencies, research and analyse the anti-money laundering situation in the financial industry, and share monitoring information. The inter-departmental communication mechanism on anti-money laundering and the corruption-related money monitoring system were set up, which provide a strong support for the anti-corruption work in China. In April 2004, the China Anti-Money Laundering Information Centre was set up within the People's Bank of China, responsible for the collection, analysis and monitoring of large-sum and suspicious transactions and thus providing a strong technical support for the anti-money laundering work in China.
China has, in succession, acceded to four international anti-money laundering conventions, and become a member of the Financial Action Task Force on Money Laundering, the Eurasian Group on Com-bating Money Laundering and Financing of Terrorism and the Asia/Pacific Group on Money Laundering.

II. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO APEC INEGRITY STANDARDS (CROSS CHECK WITH I.A. ABOVE)

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LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Strengthen Measures to Effectively Prevent and Fight Corruption and Ensure Transparency by Recommending and Assisting Member Economies to:

- Establish objective and transparent criteria that assure openness for merit, equity, efficiency for the recruitment of civil servants, and promote the highest levels of competence and integrity;
- Adopt all necessary measures to enhance the transparency of public administration, particularly with regard to organization, functioning and decision-making processes;
- Develop and implement appropriate public financial disclosure mechanisms or codes of conduct for senior-level public officials [SOM III: Guidelines];

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Efforts to enhancing transparency and upgrading administrative services. Guidelines that clarify the function, personnel, work mechanism, service items and other relevant issues of public administrative service halls are issued to ensure citizens' fundamental rights to information, participation, expression and supervision. 100 counties around the nation are selected to conduct pilot projects and 385 county-level administrative items are made public. The final objective is to explore the standardized approach to county-level governmental affairs publicity. The publicity of financial budgets and settlements on the central and provincial governmental level forms another strong measure to promote transparency.

As sunshine is the best antiseptic, transparency represents the best supervision of power. The Regulations of the People's Republic of China on Disclosure of Government Information was promulgated in 2007. The Regulations stipulate that government information, other than that related to state secrets, business secrets and personal privacy, should be made public in a timely and accurate manner, with the requirement of making public as the principle and holding back as the exception, to guarantee the people's right to know, participate, express and supervise.

The party and state organs and governments of the provinces (including autonomous regions and municipalities directly under the central government) have all established the news release system and spokes-men/spokeswomen system. Most governments above the county level have established government websites. Over 80% counties and cities in China has established one-stop government service centre. The public resources transaction centres has been established at all county, city and province level, in which most public bidding and tendering activities are required to conduct. The state judicial organs have established the system of open administration of judicial affairs to ensure openness of court, procuratorial, police and prison affairs, supplying a firm guarantee for strengthening supervision over judicial activities.

The Regulations on Leading Cadres' Report of Relevant Personal Matters entered into force in May, 2010, which requires leading cadres to honestly report their incomes, housing and investment owned or made either by themselves or together with their spouses and children living with them, as well as the employment status of their spouses and children.

III. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO SAFE HAVENS (CROSS CHECK WITH I.C. ABOVE):

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LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Deny safe haven to officials and individuals guilty of public corruption, those who corrupt them, and their assets:

- Promote cooperation among financial intelligence units of APEC members including, where appropriate, through existing institutional mechanisms.
- Encourage each economy to promulgate rules to deny entry and safe haven, when appropriate, to Officials and individuals guilty of public corruption, those who

corrupt them, and their assets.

- Implement, as appropriate, the revised Financial Action Task Force (FATF) 40 Recommendations and FATF's Special Recommendations (Santiago Course of Action)
- Work cooperatively to investigate and prosecute corruption offenses and to trace freeze, and recover the proceeds of corruption (Santiago Course of Action)
- Implement relevant provisions of UNCAC. These include:
  - Art. 14 (Money laundering)
  - Art. 23 (Laundering of Proceeds of Crime)
  - Art. 31 (Freezing, seizure and confiscation)
  - Art. 40 (Bank Secrecy)
  - Chapter V (Asset Recovery)

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

According to criminal law of China, all properties illegally acquired by criminals shall be recovered or criminals shall be ordered to return or indemnify corresponding properties, and legitimate properties of victims shall be restored in time. Public security organs, People's Procuratorates and People's Courts shall have the property of criminal suspects or defendants, as well as the fruits accruing therefrom, that they have seized or frozen well kept for examination. No entity or individual shall impropriate them or dispose of them without authorization. Legitimate properties of victims shall be restored in time. Article 198 of Criminal Procedure Law provides, after a judgment rendered by the People's Court becomes effective, all the distrained or frozen illicit money and articles as well as the fruits accruing therefrom, except those that are restored to the victim according to law, shall be confiscated and turned over to the State Treasury.

The Chinese government has highly attached importance to recovery of corruption property. In recent years, the Chinese government and its judicial organs have strengthened fighting against corruption crime and initiatively deepened the international cooperation for asset recovery. Thus, they have recovered a large amount of losses for the country and collective, effectively safeguarded the dignity of the legal system and vigorously kept the social equity and justice.

First, China actively enters into the judicial assistance treaty and deepens the international cooperation for asset recovery. China has so far entered into 106 judicial assistance treaties with 68 countries and regions, concluded treaties on extradition with 35 countries and approved over 20 multilateral international conventions for international judicial cooperation including UN Convention Against Corruption. These treaties and conventions laid a legal foundation for asset recovery with the anti-corruption and enforcing authorities of each country, and wove an invisible net, thus corrupt criminals had no way to flee away. In recent years, the Chinese procuratorial organs have entered into cooperative agreements with procuratorial and judicial organs of over 100 countries and regions for the purpose of fighting against cross-border and trans-regional corrupt crimes. Thus, the Chinese procuratorial organs have successfully arrested a number of corrupt crime suspects and triumphantly recovered a large amount of properties transferred by corrupt criminals.

Second, China respects the differences, values the actual effect and flexibly conducts international cooperation for asset recovery. China has conducted international cooperation with each country and region in the world for asset recovery on the principle of equity and mutual benefit, respecting the differences and valuing the actual effect. We respect the differences in terms of historic, cultural background and legal system of each country and region and by means of diplomacy, jurisdiction and individual case handling, has made substantial progress with respect to judicial assistance, law enforcing cooperation, repatriation and asset recovery. For example, China cooperated with the US in law enforcing to successfully recover illegal asset and repatriate the criminal involved in the case of Guangdong Kaiping Branch, Bank of China, which involved US-D483mn. China also conducted law enforcing cooperation with Canada to successfully repatriate the principal criminal Lai Changxing involved in the Xiamen Yuanhua smuggling and corruption case for 12 years of arduous negotiation.

Third, it constantly improves the domestic legislation and lays the foundation for asset recovery. Both the Criminal Law of the People's Republic of China and Criminal Procedure Law of the People's Republic of China have detailed stipulations for asset recovery. In recent years, to enable domestic laws to work in line with UN Convention Against Corruption, China constantly modifies and improves related criminal laws. In 2000, China promulgated the Extradition Law of the People's Republic of China; in 2007, it promulgated the Anti-Laundering Money Law of the People's Republic of China, which clearly specifies the legal matters in terms of property transfer, confiscation, return and sharing of ill-got property in the process of repatriation. In recent years, China repeatedly modified and improved provisions of conviction and sentencing regarding corruption crime in the criminal law. In 2012, the fifth meeting of NPC adopted Amendments to the Criminal Procedure, which specifies confiscation procedure of illegal proceeds concealed by criminal suspect and defendant or in case of their death; and specifies the applicable scope of technical investigation, approval procedure and concrete issues relevant to application of hereof.

The Ministry of Supervision has established a work coordination mechanism and early warning mechanism preventing disciplinary and illegal civil servants from fleeing to other countries with many departments.

IV. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO PRIVATE SECTOR CORRUPTION:

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LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Fight both Public and Private Sector Corruption:

- Develop effective actions to fight all forms of bribery, taking into account the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or other relevant anticorruption conventions or initiatives.
- Adopt and encourage measures to prevent corruption by improving accounting, inspecting, and auditing standards in both the public and private sectors in accordance with provisions of the UNCAC.
- Support the recommendations of the APEC Business Advisory Council (ABAC) to operate their business affairs with the highest level of integrity and to implement effective anticorruption measures in their businesses, wherever they operate.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

China has attached great importance to the exchanges and cooperation with OECD in combating bribery, and dispatched delegation as observer to attend "OECD Anti-Bribery Convention" working group meeting since 2006. In 2010, Ministry of Supervision of China and OECD co-hosted anti-bribery technical seminar in Beijing, and we are going to co-host the second technical seminar in second half of 2012.

V. ENHANCING REGIONAL COOPERATION

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LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Strengthen Cooperation Among APEC Member Economies to Combat Corruption and Ensure Transparency in the Region:

- Promote regional cooperation on extradition, mutual legal assistance and the recovery and return of proceeds of corruption.
- Afford one another the widest measure of mutual legal assistance, in investigations, prosecutions and judicial proceedings related to corruption and other offences covered by the UNCAC.
- Designate appropriate authorities in each economy, with comparable powers on fighting corruption, to include cooperation among judicial and law enforcement agencies and seek to establish a functioning regional network of such authorities.
- Sign bilateral and multilateral agreements that will provide for assistance and cooperation in areas covered by the UNCAC. (Santiago Course of Action) These include:
    - o Art. 44 – Extradition
    - o Art. 46 – Mutual Legal Assistance
    - o Art. 48 – Law Enforcement Cooperation
    - o Art. 54 – Mechanisms for recovery of property through international cooperation in confiscation
    - o Art. 55 – International Cooperation for Purposes of Confiscation
- Work together and intensify actions to fight corruption and ensure transparency in APEC, especially by means of cooperation and the exchange of information, to promote implementation strategies for existing anticorruption and transparency commitments adopted by our governments, and to coordinate work across all relevant groups within APEC (e.g., SOM, ABAC, CTI, IPEG, LSIF, and SMEWG).
- Coordinate, where appropriate, with other anticorruption and transparency initiatives including the UNCAC, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, FATF, the ADB/OECD Anticorruption Action Plan for the Asia Pacific region, and Inter-American Convention Against Corruption.

• Recommend closer APEC cooperation, where appropriate, with the OECD including a joint APEC-OECD seminar on anticorruption, and similarly to explore joint partnerships, seminars, and workshops with the UN, ADB, OAS, the World Bank, ASEAN, and The World Bank, and other appropriate multilateral intergovernmental organizations.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

China attaches great importance to strengthen international exchanges and cooperation in combating corruption. It proposes to enhance cooperation with other countries, regions and relevant international organizations, learn from one another and jointly combat corruption in the principle of respecting each other's sovereignty, equality and mutual benefit, respecting differences and placing emphasis on substantial results.
China, enhancing international exchanges and cooperation with other countries, regions and relevant international organizations, has become an important force in the international anti-corruption campaign. So far, China has signed 106 judicial assistance treaties with 68 countries and regions. It has established the China-US Joint Liaison Group on Law Enforcement Cooperation and an anti-corruption panel with the United States. It has also set up a bilateral Law Enforcement and Judicial Cooperation Consultations with Canada. It has launched the negotiation with Australia to establish bilateral anti-corruption law enforcement mechanism. The Ministry of Supervision of China have engaged in friendly exchanges with anti-corruption institutions in more than 80 countries and regions, and concluded cooperation agreements with relevant institutions in eight countries, including Russia. Multi-field exchanges and cooperation have been carried out with such international organizations as the United Nations, European Union, World Bank, Asian Development Bank (ADB) and Organization for Economic Cooperation and Development (OECD). China has also actively participated in anti-corruption cooperation within the framework of the G20 and Asia-Pacific Economic Cooperation (APEC).

To promote international exchanges and cooperation in com-bating corruption, China acceded to the United Nations Convention against Corruption in 2005. In order to fulfil its obligations, China established an inter-department coordination group consisting of 25 government departments to organize and coordinate the implementation of the convention in China and the integration of Chinese laws and the convention. In 2006, the Law of the People's Republic of China on Anti-money Laundering was promulgated to prevent and contain money laundering and relevant crimes. In 2007, the National Bureau of Corruption Prevention of China was established to carry out international cooperation and technical assistance on corruption prevention. Since the year 2008, NBCP has been hosting the Corruption Prevention Workshop among Developing Countries for 4 consecutive years. 123 officials from 37 countries have attended the workshop and topics central to the prevention of corruption are thoroughly discussed such as the best practices for integrity education and public reporting. The Workshop has become an effective platform for corruption prevention institutions of developing countries to exchange useful experiences, seek common ground and expand practical cooperation.
China also actively participates in other international anti-corruption organizations, and attends and hosts international anti-corruption meetings. In 1996, China, Pakistan and other countries jointly set up the Asian Ombudsman Association. In 2003, China acceded to the UN Convention against Transnational Organized Crime, the first such international convention. In 2005, China joined the Anti-Corruption and Transparency Experts Task Force of the Asia-Pacific Economic Cooperation Forum and the ADB/OECD Anti-Corruption Initiative for Asia-Pacific. In 2006, the Supreme People's Procuratorate initiated the International Association of Anti-Corruption Authorities (IAACA), the first such international organization, whose members are anti-corruption agencies of various countries and regions. In recent years, China has successfully held many international meetings, including the 7th International Anti-Corruption Conference (IACC), the 7th Asian Ombudsman Conference, the 5th Regional Anti-Corruption Conference for Asia and the Pacific, the 1st Annual Conference and General Meeting of the IAACA and the APEC Anti-Corruption and Transparency Symposium. China has also participated several times in such international anti-corruption conferences as the Global Forum on Fighting Corruption and Safeguarding Integrity, the Global Forum on Government Reform and the IACC.
Extradition and repatriation of corruption suspects is an important part of international anti-corruption cooperation. In 1984, China acceded to the International Criminal Police Organization, and enhanced international cooperation in catching corruption suspects fleeing abroad. In 2000, China promulgated the Extradition Law of the People's Republic of China, which laid the legal foundation for extradition cooperation between China and other countries. So far, China has concluded bilateral extradition agreements with 35 countries, and acceded to 28 multilateral conventions which contain provisions of judicial assistance and extradition. China con-ducts international judicial cooperation, including extradition, with more than 100 countries in accordance with the United Nations Convention against Corruption and the UN Convention against Transnational Organized Crime.

PEOPLE' S REPUBLIC OF CHINA

VI. OTHER APEC ACT LEADERS' AND MINISTERS' COMMITMENTS

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LEADERS' AND MINISTERS' COMMITMENTS

- 2005: Ministers encouraged all APEC member economies **to take all appropriate steps towards effective ratification and implementation, where appropriate, of the United Nations Convention against Corruption (UNCAC)**. Ministers encouraged relevant APEC member economies to make the UNCAC a major priority. They urged all member economies to submit brief annual progress reports to the ACT Task Force on their APEC anti-corruption commitments, including a more concrete roadmap for accelerating the implementation and tracking progress. (See Section I Above, UNCAC)
- 2006: Ministers underscored their commitment **to prosecute acts of corruption, especially high-level corruption by holders of public office and those who corrupt them**. In this regard, Ministers commended the results of the Workshop on Denial of Safe Haven: Asset Recovery and Extradition held in Shanghai in April 2006. Ministers agreed to consider developing domestic actions, in accordance with member economy's legislation, to deny safe haven to corrupt individuals and those who corrupt them and prevent them from gaining access to the fruits of their corrupt activities in the financial systems, including by implementing effective controls to deny access by corrupt officials to the international financial systems.
- 2007: We endorsed a model **Code of Conduct for Business, a model Code of Conduct Principles for Public Officials and complementary Anti-Corruption Principles for the Private and Public Sectors.** We encouraged all economies to implement these codes and welcomed agreement by Australia, Chile and Viet Nam to pilot the Code of Conduct for Business in their small and medium enterprise (SME) sectors. (AELM, AMM)
- 2008: We commended efforts undertaken by member economies to develop comprehensive anti-corruption strategies including efforts to restore public trust, ensure government and market integrity. We are also committed **to dismantle transnational illicit networks and protect our economies against abuse of our financial system by corrupt individuals and organized criminal groups through financial intelligence and law enforcement cooperation related to corrupt payments and illicit financial flows.** We agreed to further strengthen international cooperation to combat corruption and money laundering in accordance with the Financial Action Task Force standards. International legal cooperation is essential in the prevention, investigation, prosecution and punishment of serious corruption and financial crimes as well as the recovery and return of proceeds of corruption. (AELM, AMM)
- 2009: We welcome the Anti-Corruption and Transparency Experts' Task Force's Singapore **Declaration on Combating Corruption, Strengthening Governance and Enhancing Institutional Integrity, as well as the APEC Guidelines on Enhancing Governance and Anti-Corruption**. We encourage economies to implement measures to give practical effect to the Declaration and Guidelines. (AMM)
- 2010: We agreed to leverage collective action **to combat corruption and illicit** trade by promoting clean government, fostering market integrity, and strengthening relevant judicial and law enforcement systems. We agreed to deepen our cooperation, especially in regard to discussions on achieving more durable and balanced global growth, increasing capacity building activities in key areas such as combating corruption and bribery, denying safe haven to corrupt officials, strengthening asset recovery efforts, and enhancing transparency in both public and private sectors. We encourage member economies, where applicable, **to ratify the UN Convention against Corruption and UN Convention against Transnational Organized Crime and to take measures to implement their provisions, in accordance with economies legal frameworks to dismantle corrupt and illicit networks across the Asia Pacific region. (AELM, AMM)**

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

The Supervision and Management Regulations on Overseas Investment by Central Enterprises (Interim) came into effect on May 1st 2012. According to the regulations, all the immovable property investment made by central enterprises as well as all their solely-funded and holding subsidiaries shall be under supervision and management. The investment in industries beyond their business scope shall be reported to the State-owned Assets Supervision and Administration Commission of State Council and undergo a series of strict examination and verification.

ECONOMY: HONG KONG, CHINA
CALENDAR YEAR: 2012
LAST UPDATED: May 11, 2012

LEADERS' AND MINISTERS' COMMITMENTS

- **2010**: We agreed to enhance our efforts to improve transparency and eliminate corruption, including through regular reporting via ACT and other relevant fora on economies' progress in meeting APEC Leaders' commitments on anti-corruption and transparency.
- **2006**: Ministers endorsed APEC 2006 key deliverables on Prosecuting Corruption, Strengthening Governance and Promoting Market Integrity and encouraged member economies to take actions to realize their commitments. Ministers also encouraged all economies to complete their progress reports on the implementation of ACT commitments by 2007. Ministers welcomed APEC efforts to conduct a stocktaking exercise of bilateral and regional arrangements on anti-corruption in cooperation with relevant international and regional organizations, and encouraged member economies to fully participate in the stocktaking activities.

Objective: Where appropriate, to self-assess progress against APEC Leaders' and Ministers' commitments on anti-corruption, transparency, and integrity and to identify capacity building needs to assist the ACT to identify priority areas for future cooperation.

EXECUTIVE SUMMARY

1. Summary of main achievements/progress in implementing the commitments of APEC Leaders and Ministers on anti-corruption, transparency, and integrity since 2004.

Hong Kong, China (HKC) is firmly committed to the fight against corruption and accords top priority to international cooperation in anti-corruption measures. Further to the ACT Task Force Country Report in 2007, HKC continues to combat corruption through vigorous enforcement of the anti-corruption law, provision of corruption prevention advice, and by fostering a culture of probity through mass media publicity campaigns and face-to-face preventive education programmes, including ethics training for both the public and private sectors.

On 12 February 2006, the United Nations Convention Against Corruption (UNCAC) came into force for the People's Republic of China (China) and became applicable to HKC at the same time. The UNCAC introduces a comprehensive set of standards, measures and rules that State Parties can apply, in order to strengthen the legal and regulatory regimes to fight corruption. It calls for preventive measures and the criminalization of various forms of corruption in both public and private sectors. The requirements of the UNCAC have been fully implemented by existing legislation and administrative measures of HKC.

On the implementation of anti-corruption commitments relating to APEC integrity standards, HKC has adopted all necessary measures to enhance the transparency of public administration, particularly with regard to organization, functioning and decision-making processes.

With regard to denying safe haven to officials and individuals guilty of public corruption, HKC is fully committed to the implementation of the FATF Recommendations. HKC has full legal capabilities in accordance with mechanisms provided in the UNCAC and domestic law to investigate and prosecute corruption offences and to recover proceeds of corruption.

In terms of enhancing regional and international cooperation, HKC has signed bilateral and multilateral agreements that will provide for assistance and cooperation in areas covered by the UNCAC, such as extradition, mutual legal assistance, and mechanisms for recovery of property through regional and international cooperation in confiscation.

2. Summary of forward work program to implement Leaders' and Ministers' commitments.

HKC is committed to keeping up the momentum in enforcing the anti-corruption law, preventing corruption, enhancing transparency and promoting effective control and good governance in both the public and private sectors. It will also keep up the momentum in pursuing cooperation with overseas jurisdictions in combating and preventing corruption.

HKC will continue to conduct detailed reviews on public sector procedures and practices and offer timely corruption prevention advice on public policies and procedures to help ensure they are fair, just and transparent. It will also continue to provide tailor-made corruption prevention advice to private companies to assist them in implementing effective corruption resistant procedures and promulgate good corporate governance. In addition, HKC will continue to approach specific trades and industries through respective associations or professional bodies to jointly organize corruption prevention campaign and capacity building training to promote corruption resistant procedures and effective control.

3. Summary of capacity building needs and opportunities that would accelerate/ strengthen the implementation of APEC Leaders' and Ministers' commitments by your economy and in the region.

HKC will continue to provide corruption prevention services and capacity building training for civil servants, staff of public bodies, professionals, directors and employees of different trades and industries in the private sector.
HKC will continue to build upon existing networks for regional and international cooperation at all levels and to develop new networks as appropriate. It will also continue to share its experiences and initiatives with other APEC member economies and overseas jurisdictions.

I. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO UNCAC PROVISIONS

LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Take All Appropriate Steps Towards Ratification of, or Accession to, and Implementation of the UNCAC:

- Intensify our efforts to combat corruption and other unethical practices, strengthen a culture of transparency, ensure more efficient public management, and complete all appropriate steps to ratify or accede to, and implement the UNCAC.
- Develop training and capacity building efforts to help on the effective implementation of the UNCAC's provisions for fighting corruption.
- Work to strengthen international cooperation in preventing and combating corruption as called for in the UNCAC including extradition, mutual legal assistance, the recovery and return of proceeds of corruption.

I.A. Adopting Preventive Measures (Chapter II, Articles 5-13)

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RELEVANT UNCAC PROVISIONS

Chapter II, Articles 5-13 including:

- Art. 5(2) Establish and promote effective practices aimed at the prevention of corruption.
- Art. 7(1) Adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials that:
  - Are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;
  - Include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;
  - Promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;
  - Promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions.
- Art. 7(4) Adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.
- Art. 8(2) Endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.
- Art. 8(5) Establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials. Art. 52(5)/ (6) [sharing the information on the financial disclosures that should be in place]
- Art. 10(b) Simplify administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities.
- Art. 12(2)(b) Promote the development of standards and procedures designed to safeguard the integrity of private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State.
- Art. 12(2)(c) Promote transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities.

Art. 13(1) Promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Santiago Commitment/COA: Take All Appropriate Steps Towards Ratification of, or Accession to, and Implementation of the UNCAC:

- Intensify our efforts to combat corruption and other unethical practices, strengthen a culture of transparency, ensure more efficient public management, and complete all appropriate steps to ratify or accede to, and implement the UNCAC.
- In HKC, since the inception in 1974 of an independent anti-corruption law enforcement agency, the Independent Commission Against Corruption (ICAC), a three-pronged strategy has been adopted to combat corruption: enforcement, prevention and education through the Operations Department, the Corruption Prevention Department (CPD) and the Community Relations Department (CRD) respectively (website : www.icac.org.hk).
- The Commissioner of ICAC is advised by an Advisory Committee on Corruption which is the principal advisory body of the ICAC and oversees all the Commission's activities.
- The work of each of the three departments is respectively overseen by an independent committee: Operations Review Committee (ORC) for the Operations Department; Corruption Prevention Advisory Committee for the CPD and Citizens Advisory Committee on Community Relations for the CRD. Members of these committees are drawn from reputable citizens of the community and appointed by the Chief Executive of HKC.
- All corruption complaints, relating to both the public and private sectors, are investigated without fear or favour by the Operations Department. Upon conclusion of all investigations, they are either forwarded to the Department of Justice for advice on prosecution or reported to the ORC.
- To ensure fair, transparent and efficient public management, the CPD reviews operations of government departments to help ensure that their procedures are fair, open, accountable and corruption resistant.
- To heighten a culture of public ethics within the Government in HKC, the CRD provides corruption prevention training for newly recruited and serving public servants. In addition, the ICAC jointly launched integrity entrenchment programmes with the Civil Service Bureau (CSB) to assist government bureaux/departments in formulating codes of conduct and organizing anti-corruption training. A Resource Centre on Civil Service Integrity Management (RCIM) has also been set up in the Government intranet.
- To further provide a platform for sustaining the initiatives in integrity building and experience sharing, the ICAC and the CSB jointly launched, in early 2007, the Ethical Leadership Programme under which heads of bureaux/departments designate a senior staff as the Ethics Officer to oversee integrity building in their setup.
- The Central People's Government of China has ratified the UNCAC. The Convention has entered into force for China with effect from 12 February 2006 and is at the same time applicable to HKC.
- The ICAC is designated by the Central People's Government of China as the authority in HKC to assist other State Parties in developing and implementing specific measures for the prevention of corruption.
- Develop training and capacity building efforts to help on the effective implementation of the UNCAC's provisions for fighting corruption.
- Art. 60 of the UNCAC relates to training and capacity building.
- In-house briefings have been conducted by the ICAC for its officers to equip them with the necessary knowledge of the various articles of the UNCAC.
- The ICAC has been sending officers to overseas courses. Its officers participated in training provided by reputable institutions and law enforcement agencies in different jurisdictions. Such training programmes help ensure that officers' professional skills continue to remain at the leading edge of global best practice.
- The ICAC has assisted numerous overseas jurisdictions with capacity building and technical assistance. Every year, the ICAC runs a Chief Investigators' command course for supervisory officers from local and overseas law enforcement agencies including those from APEC member economies. In recent years, training courses have been provided to officers from two APEC member economies in respect of interviewing suspects and witnesses, conducting corruption investigations and on how to run professional training courses for investigators. Overseas visitors including those from APEC member economies have been briefed on the work of the ICAC and benefited from lectures concerning corruption, money laundering and mutual legal assistance. ICAC training officers have also joined overseas faculties and taught on corruption courses run in Europe and at the International Law Enforcement Academy in Thailand and the Malaysian Anti-Corruption Academy in Kuala Lumpur.
- The ICAC organizes visiting programmes for personnel of overseas anti-corruption agencies to introduce the anti-corruption model of HKC. ICAC officers also attend international conferences or visit overseas organizations for experience sharing.

- Work to strengthen international cooperation in preventing and combating corruption as called for in the UNCAC including extradition, mutual legal assistance, the recovery and return of proceeds of corruption.
- With corruption becoming increasingly transnational in nature, the ICAC recognizes the need for mutual assistance between anti-corruption agencies in order to be effective in the fight against corruption. To this end, the ICAC maintains close

operational liaison with its counterparts and other law enforcement agencies in the Asia Pacific region and in other parts of the world.

- On 21 December 2007, the Fugitive Offenders (Corruption) Order came into force. This Order applies the procedures in the Fugitive Offenders Ordinance, Chapter 503 of the Laws of Hong Kong, to allow for extradition for all offences covered by the UNCAC with other State Parties to the Convention on a multilateral basis.
- On 22 February 2008, the Mutual Legal Assistance in Criminal Matters (Corruption) Order came into force. This Order applies the procedures in the Mutual Legal Assistance in Criminal Matters Ordinance (MLA Ordinance), Chapter 525 of the Laws of Hong Kong, to allow mutual legal assistance (including the return and sharing of recovered assets) for all offences covered by the UNCAC with other State Parties to the Convention on a multilateral basis.
- HKC already has full legal capability to provide a full range of mutual legal assistance (including the sharing and return of assets) for all corruption offences and other offences covered by the UNCAC on bilateral basis with existing treaty partners under other mutual legal assistance agreements.
- HKC can also provide mutual legal assistance based on reciprocity (i.e. without a treaty) for all corruption and other offences covered by the UNCAC but it cannot share or return asset without a treaty basis.

Chapter II, Articles 5-13 including:

- **Art. 5(2) Establish and promote effective practices aimed at the prevention of corruption.**
- The ICAC systematically reviews the public sector procedures and practices to institute corruption resistant procedures and measures, and enhance transparency and accountability. In 2011, a total of 71 corruption prevention reviews were completed with corruption prevention advice given to improve the system and procedures, with a view to reducing opportunities for corruption. Most of the advice given was accepted and effectively implemented. In addition, the ICAC gave prompt corruption prevention advice on policies and procedures to government departments and public organizations on over 530 occasions. The ICAC also provides advice to private companies to assist them in promoting corporate governance and internal controls that safeguard against corruption and malpractice. In 2011, corruption prevention advice was given in response to a total of 397 requests.
- As an on-going initiative, the ICAC provides timely corruption prevention services to major government construction projects, such as the Guanzhou-Shenzhen-Hong Kong Express Rail Link, the Hong Kong-Zhuhai-Macao Bridge, the West Kowloon Cultural District Development, and the new cruise terminal project. To ensure a level playing field in the tendering process in these major projects, the ICAC has adopted an integrated approach whereby advice on the tender documents and tender assessment procedure is offered first, followed by ICAC's representatives sitting as an observer on the tender assessment panels of respective projects to further advise on the assessment procedures as and when appropriate.

- **Art. 7(1) Adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials that:**
  - **Are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;**
  - **Include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;**
  - **Promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;**
  - **Promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions.**

- The Public Service Commission (PSC) is an independent statutory body which advises the Chief Executive of HKC on, among other matters, civil service recruitment matters mainly related to senior ranks. The PSC helps to ensure that civil service appointment decisions are made upon fair, impartial, meticulous and thorough deliberations and in accordance with the prevailing policies and requirements.
- The Civil Service Training and Development Institute (CSTDI) of CSB organises training workshops on integrity issues for officers at managerial levels on a regular basis. Core civil service values, including integrity, are also incorporated as key topics in staff induction seminars for new recruits.
- To enhance public officials' awareness of the risks of corruption, the ICAC provides corruption prevention training for newly recruited and serving civil servants. Each year, the ICAC reaches around 27,000 civil servants and employees of public bodies through its training programmes. In addition, the ICAC has jointly established with CSB a platform for sustaining the initiatives in integrity building and experience sharing, i.e. the Ethical Leadership Programme, which was launched in 2007. Under the programme, a network of over 150 Ethics Officers from about 80 government bureaux and departments was established to oversee integrity building in their respective units. To provide support to the Ethics Officers, the ICAC and CSB organise workshops on specific topics regularly and provide integrity-related reference materials, such as a reference package on conflict of interest, to them. A dedicated intranet website for Ethics Officers was also set up for sharing of integrity promotion materials and enhancing communication.

• In early 2009, the ICAC compiled a corruption prevention checklist on staff recruitment to assist government departments in adopting corruption prevention measures in the recruitment of contract staff.

• **Art. 7(4) Adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.**

• The Administration of HKC and the ICAC have promulgated and kept under constant review of specific regulations, rules, operational procedures and guidelines on civil service conduct matters including conflict of interest and acceptance of advantages, etc.

• CSB and the ICAC jointly launched the Ethical Leadership Programme to foster and sustain the culture of integrity in the civil service through the leadership and commitment of the senior management in bureaux/departments. Seminars on integrity and outreach visits to departments have been organised on a regular basis. An intranet website known as RCIM has also been set up to disseminate information on integrity.

• To promote transparency in public administration and prevent conflict of interest, the ICAC addressed at a workshop organized in early 2011 under the Ethical Leadership Programme for the Ethics Officers of all government departments to sustain and strengthen an ethical culture in the civil service.

• **Art. 8(2) Endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.**

• CSB has promulgated the Civil Service Code to all staff in the civil service. The Code sets out, among others, the core values and standards of conduct which civil servants are expected to uphold.

• In late 2011, the ICAC assisted CSB in drawing up a booklet on the common law offence of Misconduct in Public Office to enhance civil servants' awareness of the offence. The booklet will be published by CSB in mid 2012.

• **Art. 8(5) Establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials. Art. 52(5)/(6) [sharing the information on the financial disclosures that should be in place]**

• To guard against conflict of interest with their official duties, civil servants are required to avoid conflict of interest and to declare to their supervisors if such situations arise. Civil servants filling designated posts are also required to declare, on a regular basis, their private investments. The most senior positions in the civil service are subject to additional requirement to register, on appointment and annually thereafter, their financial interests for public inspection on request.

• CSB has promulgated the Civil Service Code to all staff in the civil service. The Code sets out, among others, the core values and standards of conduct which civil servants are expected to uphold. The Administration and the ICAC have also promulgated and kept under constant review of specific regulations, rules, operational procedures and guidelines on civil service conduct matters including conflict of interest, acceptance of advantages and declaration of investments, etc.

• CSB has implemented an improved control regime governing the taking up of post-service outside work by directorate civil servants.

• **Art. 10(b) Simplify administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities.**

• To ensure transparent, fair and efficient public management, it is an ongoing effort of the ICAC to regularly review operations of government departments to help ensure that their procedures are open, accountable and corruption resistant. In 2011, a total of 71 corruption prevention reviews were completed; and prompt corruption prevention advice on policies and procedures was given to government departments and public organizations on over 530 occasions.

• In line with the Government's commitment to openness, transparency and accountability, all bureaux and departments produce their home pages in Chinese and English to disseminate information through the Internet on its policies, services and activities and to communicate with the public. Thematic home pages are also produced for special events and topics. These home pages can be accessed through the Government's one-stop portal, GovHK (at http://www.gov.hk), which have both desktop and mobile versions.

• The Government will consult the public and relevant stakeholders when it formulates and reviews major policies. If public consultation is needed, the relevant subject bureaux and departments will take the lead in deciding how to gauge public opinions on different policies. Channels to gauge public opinions used by the lead bureaux and departments may include consultations with the Legislative Council, relevant District Councils, advisory boards and committees, other organisations, political parties and individuals concerned, etc. The Home Affairs Department will also assist the lead bureaux and departments in formulating public consultation strategies and conducting the consultation, including consultation with District Councils, as and when necessary.

• It is the Government's policy to make available as much as possible so that the public can better understand how public policies are formulated and implemented. The Code on Access to Information defines the scope of information which government bureaux and departments are to provide, either routinely or on request, and sets out procedures and timeframes by which such information is to be made available. It authorizes and requires bureaux and departments to provide the public

with information requested unless there are valid reasons to withhold disclosure (related to commercial interests, third party or privacy of an individual).

• **Art. 12(2)(b) Promote the development of standards and procedures designed to safeguard the integrity of private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State.**

• Since 2004, probity clauses are included in public works contract. This requires all consultants and contractors to prohibit their employees, agents and sub-consultants/ sub-contractors from offering, soliciting and accepting any advantage, declare any potential and real conflict of interest, and keep project information confidential while involved in public works projects. Apart from that, anti-collusion clauses are incorporated in public works contracts to reduce the likelihood of malpractice and corruption.

• As an on-going initiative, the ICAC also recommends and encourages government departments and public organizations to adopt similar probity clauses in their public procurement contracts, with a view to upholding high ethical standards of their contractors and suppliers and promoting ethical practices. In addition, since late 2010, upon the ICAC's recommendation, government departments/bureaux have incorporated anti-collusion clauses in public procurement processes with a view to further enhancing the integrity of government contractors/suppliers and reducing the likelihood of corruption.

• The ICAC offers advice to private companies on improving their internal controls to safeguard against corruption and malpractice. The advice is free of charge, confidential, and tailor-made to meet the specific needs of the organization. In 2011, the ICAC provided advisory services to private sector companies/organizations on over 390 occasions.

• The ICAC recognizes that business operators, managers and practitioners play an important role in helping their companies prevent corruption and adopt good internal control practices. To enhance their capacity in this regard, the ICAC partnered with trade associations, regulators and professional institutes to provide corruption prevention training to relevant business practitioners on a regular basis. A wide range of topics were covered in these training sessions, such as handling of conflict of interest and procurement.

• As an on-going initiative, a wide range of Best Practice Modules (BPM) (e.g. in the form of Corruption Prevention Guides or Best Practices Checklists (BPC)) have been developed by the ICAC to provide private companies of different trades or industries with user-friendly guidelines on plugging corruption loopholes and enhancing internal control measures. The ICAC also actively encourages and assists private companies to draw up a Code of Conduct for their staff with a view to promoting ethical practices and upholding staff integrity. BPMs with sample Code of Conduct for staff are available on the ICAC website for free download.

• The ICAC recognizes that it is important to equip future young professionals with corruption prevention concepts. Hence, to educate future professional practitioners in various industry sectors about the evil of corruption and to raise their awareness of corruption prevention, the ICAC has developed modules for major universities in HKC for inclusion in their trade-specific undergraduate courses, e.g. construction-related professional courses. To deliver the corruption prevention message, professional staff of the ICAC assist the universities in teaching these modules, which comprise an introduction of the local anti-bribery law, case studies on the corruption pitfalls and preventive measures in the industry, and a short test for course assessment.

• The Hong Kong Ethics Development Centre (HKEDC) was established in 1995 by the ICAC to promote business ethics on a long-term basis. HKEDC approaches all listed and major companies, trade and professional bodies to encourage them to take positive steps to safeguard integrity, such as formulating/reviewing company codes of conduct, tightening internal control systems and organizing ethics training for their employees. In particular, all newly listed companies will be approached within three months to promote ethical business practices and ICAC services. About 70% of the listed companies contacted have adopted ICAC's corruption prevention services. The HKEDC also organizes conferences and thematic seminars for Small and Medium Enterprise (SME) operators and senior staff of business organizations to encourage them to uphold integrity and implement effective anti-corruption measures when conducting business. Each year, the ICAC reaches around 39,000 managers and employees of business organizations through its training programmes.

• The Companies Registry of HKC issues "A Guide on Directors' Duties", which outlines the general principles on directors' duties. One key principle is that a director must avoid conflicts of his personal interests and interests of the company. Further, the Companies Registry collaborates with the Hong Kong Institute of Directors, the Hong Kong Institute of Chartered Secretaries and other professional bodies as well as Chambers of Commerce to promote the importance of good corporate governance and to provide professional training to directors and company secretaries.

• **Art. 12(2)(c) Promote transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities.**

• The Companies Ordinance (CO), Chapter 32 of the Laws of Hong Kong, provides the legal framework for the incorporation and operation of companies in HKC. The core company provisions of the CO (except the winding-up provisions) are administered by the Companies Registry. Under section 305 of CO, all information held

by the Companies Registry on locally incorporated companies and non-HKC companies having established a place of business in HKC is disclosed in the Companies Registry's registers for public inspection. Members of the public are able to obtain company information, including information on the members and directors, online.

- A number of provisions in the CO specifically aim at promoting transparency regarding the identities of legal and natural persons involved in the establishment and management of corporate entities, such as :-

  (a) Section 14A provides that a person who wishes to form an incorporated company shall apply to the Registrar of Companies in a specified form which contains, inter alia, particulars of each person who is to be a director and the secretary of the company on its incorporation.

  (b) Sections 158(1) and (7) provide that every company shall keep a register of its directors and secretaries and that such register shall be open to the inspection of any member of the company without charge and of any other person on payment of a specified fee.

  (c) Section 158(4) further provides that where there is any change in the company's directors and secretary or in any of their particulars contained in the register, the company shall send a notification to the Registrar in specified form which is available for public inspection.

  (d) Sections 95(1)(a), 96 and 98 require the register or index of members of a company which gives particulars of the names of members and shares held to be open to inspection by members and non-members. All entries in the register of members relating to persons who cease to be members must be retained for 30 years.

  (e) Under Sections 107(2)(f) & (g), particulars relating to directors, secretary, members and share capital of a company are required to be given in the company's annual return which is required to be filed with the Registrar and is available for public inspection.

  (f) Under Section 29, the issuance of share warrants to bearer by a private company is prohibited in view of the restriction as to transfer of shares.

- In March 2011, the Companies Registry launched the electronic incorporation and electronic filing of documents via the e-Registry, a 24-hour portal to facilitate electronic submission of applications for company incorporation, specified forms and documents required under the CO. Transparency of legal and natural persons involved in the establishment and management of corporate entities is further enhanced through the user registration system of the e-Registry. To use the electronic services at the e-Registry, a person must register as a user of the e-Registry. Individual user has to attach an electronic certificate, or a certified true copy of his/her identification document (Hong Kong Identity Card or overseas passport), or present the original identification document in person at the Registry's offices when applying for user registration. The identities of the registered users will be verified before documents can be signed and submitted via the e-Registry.

- **Art. 13(1) Promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption.**
- The ICAC has been adopting a face-to-face approach and enlisting community support to fight against corruption. It organizes anti-corruption activities, publicity campaigns and territory-wide programmes for different targets through close partnership with non-profit making organizations, citizen's groups, schools, tertiary institutions and youth related organizations. Each year, these activities and programmes reach about 400,000 people. The ICAC Club, which has about 1,200 members from the community, was established in 1997 to provide a channel for the public to partake in and demonstrate support for the anti-corruption cause. Furthermore, since 2007/08, the ICAC has been organizing an Ambassador Programme to mobilize university students to organise activities on the school campus to put across probity messages among their fellow students. A Personal Ethics Module for University Students was developed in 2010/11 and has been incorporated in the General Education or related programmes of eight local universities in 2011/12.
- To foster good governance of non-governmental organisations (NGOs), the ICAC in 2010 developed a BPC on governance and internal control for NGOs and organized a workshop to promulgate the BPC. The workshop was attended by over 120 board members and senior executives of NGOs.
- To assist social enterprises in strengthening their governance, management and internal control, the ICAC, in collaboration with the stakeholders (including government departments and the relevant associations) developed and promulgated a BPC in 2011, aiming at enhancing their internal control systems and building in corruption resistant procedures in areas such as procurement, sales and financial control. Alongside the promulgation of the BPC, the ICAC joined hands with the trade associations to organize seminars for the social enterprises to assist them to implement the control safeguards recommended in the BPC.
- In HKC, there are a total of 74 national sports associations (NSAs) with the objective of promoting and developing local sports activities as well as nurturing and nominating athletes to participate in international events in their respective sports disciplines. Of these, 58 receive a total of over HK$200 million government subvention a year. To enhance the governance of NSAs, the ICAC conducted a research study in 2011, aiming to assist NSAs in strengthening their integrity management and building in suitable internal control measures. Based on the research findings, the ICAC compiled a "Best Practice Reference for Governance of National Sports Associations", covering governance, integrity management, selection of athletes, and management of coaches and umpires, etc. The ICAC and the relevant government

department jointly organized a seminar to launch the Best Practice Reference (BPR) to all NSAs. The BPR is also available on the ICAC's website.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

Chapter II, Articles 5-13 including:

- **Art. 5(2) Establish and promote effective practices aimed at the prevention of corruption.**
- The ICAC will continue to review public sector procedures to help ensure they are fair, just and transparent. The ICAC will also continue to provide advice to private companies to assist them in implementing effective corruption resistant procedures, and promulgate good corporate governance.

- **Art. 7(1) Adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials that:**
  - **Are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;**
  - **Include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;**
  - **Promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;**
  - **Promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions.**
- The ICAC will continue to make use of the network of Ethics Officers to entrench a culture of probity in the civil service. In addition, to tie in with the release of the reference package on conflict of interest, training on managing conflict of interest will continue to be provided to government bureaux and departments in 2012 with a tailor-made video for triggering discussion.
- CSTDI will continue to provide training programmes to government bureaux and departments to promote integrity and other core values of the civil service on a regular basis.
- **Art. 7(4) Adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.**
- CSB and the ICAC will organise the next workshop under the Ethical Leadership Programme in the latter half of 2012.
- CSB will continue to upload reference material and precedent cases onto the RCIM accessible to all civil servants to provide them with up-to-date and handy information.
- CSB plans to publish a booklet on the common law offence of Misconduct in Public Office for civil servants' reference in mid 2012 in order to enhance their awareness and understanding of this offence.

- **Art. 8(2) Endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.**

(See response in Art.7(4) above)

- **Art. 8(5) Establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials. Art. 52(5)/(6) [sharing the information on the financial disclosures that should be in place]**

(See response in Art.7(4) above)

- **Art. 10(b) Simplify administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities.**
- The ICAC will continue to review public administrative systems and procedures, aiming at preventing corruption and ensuring transparency.

- **Art. 12(2)(b) Promote the development of standards and procedures designed to safeguard the integrity of private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State.**
- The ICAC will continue to recommend government departments and public organizations to adopt probity clause in their public procurement contracts for various goods and services, with a view to upholding high ethical standards of their contractors and suppliers and promoting ethical practices.
- The ICAC will continue to provide tailor-made corruption prevention advice and education services for different trades and professions in the business sector; and together with the trade associations, organize corruption prevention campaigns to promulgate good corporate governance and assist the companies in implementing

effective corruption resistant procedures.

- The ICAC will jointly produce with Guangdong Provincial People's Procuratorate of China and Commission Against Corruption of Macao, China a new legal guide for SMEs in late 2012 to raise their awareness to the legal requirements on anti-corruption in different jurisdictions and encourage them to adopt ethical business practices when conducting cross-boundary business.
- There will be major improvements in the CO in the enhancement of corporate governance and transparency after a major and comprehensive rewrite of the CO. The Companies Bill is now under the scrutiny of a Bills Committee in the Legislative Council. In particular, new legislative measures will be introduced to specify the standard of directors' duty of care, skill and diligence with a view to clarifying the duty under the law and providing guidance to directors. Transparency of companies and rules regarding directors' self-dealings will also be improved. Public and large private companies will be required to prepare a more analytical business review as part of the directors' report, covering environmental performance and employee issues as appropriate. Other new legislative measures include :-

  (a) limiting the appointment of corporate directors by requiring every private company to have at least one natural person as director so as to enhance transparency and accountability;
  (b) fostering shareholders' protection, such as introducing more effective rules to deal with directors' conflicts of interests;
  (c) expanding the prohibitions on loans and similar transactions to cover a wider category of persons connected with a director;
  (d) requiring disinterested members' approval for various prohibited transactions;
  (e) expanding the prohibitions on payments for loss of office;
  (f) requiring members' approval for directors' employment exceeding three years;
  (g) widening the ambit of disclosure by directors of material interests in contracts; and
  (h) enhancing transparency of share ownership by prohibiting all types of companies to issue share warrants to bearer.

- The above legislative proposals will ensure greater transparency and accountability within a company's operations and greater opportunity for all members to engage in company business in an informed way. The new CO is expected to be enacted in July 2012 and implemented in 2014.

- **Art. 12(2)(c) Promote transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities.**
(See response in Art.12(2)(b) above)

- **Art. 13(1) Promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption.**
- The ICAC will continue to organize publicity campaigns and maintain close contacts with different community groups, youth targets as well as the ICAC Club members in the fight against corruption. Apart from continuing the Ambassador Programme in individual universities, the ICAC will also organize a three-year youth ethical leadership training programme for students of all universities and tertiary education institutions starting from 2012/13. Invitations will be extended to all local universities and tertiary education institutions to incorporate the Personal Ethics Module in relevant programme(s) in the 2012/13 academic year and thereafter.
- In 2012, the ICAC has proactively approached all NSAs to offer tailor-made corruption prevention services to assist them in implementing the measures in the BPR. Thematic training workshops (e.g. selection of athletes for international competitions) will also be organized for them.

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

- The Administration of HKC is firmly committed to upholding high standards of integrity and probity in the civil service. CSB and the ICAC will continue to work closely with government bureaux/departments through a proven three-pronged strategy (namely prevention, education and sanction) to promote integrity in the civil service.
- One of the main objectives of the CO rewrite is the introduction of a strengthened legal and regulatory framework taking into account public's views on the various new proposals for enhancing corporate governance and transparency. To secure an effective implementation of the corporate governance provisions in the Companies Bill, education of the public including companies, directors, shareholders and creditors about the corporate governance reforms under the CO rewrite is one of the top priorities. Publicity arrangements for the implementation of the new CO including guidelines and circulars will help promote the need for good corporate governance and enhance transparency of corporate entities.

I. B. Criminalization and Law Enforcement (Chapter III)

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RELEVANT UNCAC PROVISIONS

- Art. 15 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
  - The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
  - The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.
- Art. 16(1) Adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally,
the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage,
for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.
- Art. 17 Adopt measures to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.
- Art. 20 Adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.
- Art. 21 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:
  - The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;
  - The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.
- Art. 27(1) Adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

- Art. 15 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
  - The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
  - The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.
- HKC is compliant by virtue of Sections 4 to 8 and 10 of the Prevention of Bribery Ordinance (POBO), Chapter 204 of the Laws of Hong Kong, and supplemented by its Section 2(2) that
  (a) a person offers an advantage if he, or any other person acting on his behalf, directly or indirectly gives, affords or holds out, or agrees, undertakes or promises to give, afford or hold out, any advantage to or for the benefit of or in trust for any other person;
  (b) a person solicits an advantage if he, or any other person acting on his behalf, directly or indirectly demands, invites, asks for or indicates willingness to receive, any advantage, whether for himself or for any other person; and
  (c) a person accepts an advantage if he, or any other person acting on his behalf, directly or indirectly takes, receives or obtains, or agrees to take, receive or obtain any advantage, whether for himself or for any other person.
- Art. 16(1) Adopt such legislative and other measures as may be necessary

to establish as a criminal offence, when committed intentionally,
the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage,
for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

- Prosecution under Section 9 of the POBO is possible if the crime is committed within the jurisdiction of HKC. If the crime is committed outside HKC's jurisdiction, HKC can extradite any person to any jurisdiction where that person has engaged in the bribery of a foreign public official in that jurisdiction pursuant to bilateral or multilateral arrangements such as the UNCAC, subject to relevant arrangements under the Fugitive Offenders Ordinance.
- Art. 17 Adopt measures to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.
- HKC is compliant by virtue of laws under the Theft Ordinance, Chapter 210 of the Laws of Hong Kong and the common law offence of Misconduct in Public Office and Section 4 and/or Section 9 of the POBO if the offence involves payments of bribes.
- Art. 20 Adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.
- HKC is compliant by virtue of Section 10 of the POBO that makes it an offence for a government servant to maintain a standard of living above that which is commensurate with his/her present or past official emoluments or be in control of pecuniary resources or property disproportionate to his/her present or past official emoluments.
- Art. 21 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:
  - The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;
  - The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.
- HKC is compliant by virtue of its private sector corruption laws under Section 9 of the POBO which criminalizes corrupt transactions with agents and supplemented by Section 2(2) that
  (a) a person offers an advantage if he, or any other person acting on his behalf, directly or indirectly gives, affords or holds out, or agrees, undertakes or promises to give, afford or hold out, any advantage to or for the benefit of or in trust for any other person;
  (b) a person solicits an advantage if he, or any other person acting on his behalf, directly or indirectly demands, invites, asks for or indicates willingness to receive, any advantage, whether for himself or for any other person; and
  (c) a person accepts an advantage if he, or any other person acting on his behalf, directly or indirectly takes, receives or obtains, or agrees to take, receive or obtain any advantage, whether for himself or for any other person.
- Art. 27(1) Adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.
- All inchoate offence liability is established under Section 89 of Criminal Procedure Ordinance (CPO), Chapter 221 of the Laws of Hong Kong and Sections 38, 56 and 93 of the Crimes Ordinance, Chapter 200 of the Laws of Hong Kong (aiding, abetting, counselling and procuring of offender); also Section 159G of the Crimes Ordinance (attempt).

I.C. Preventing Money-Laundering

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RELEVANT UNCAC PROVISIONS

- Art. 14(1) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons, that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering.
- Art. 14(2) Implement feasible measures to detect and monitor the movement

of cash and appropriate negotiable instruments across their borders.

• Art. 14(3) Implement appropriate and feasible measures to require financial institutions, including money remitters, to:

(a) include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;
(b) maintain such information throughout the payment chain; and
(c) apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

• Art. 14(1) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons, that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering.

• To implement the Recommendations of the Financial Action Task Force (FATF), HKC has enacted a new legislation (viz. Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (AMLO)) to provide for a statutory framework for regulatory regime for the preventive anti-money laundering (AML) measures. The AMLO was implemented on 1 April 2012. Under the AMLO, financial institutions, including banks and non-bank financial institutions that provide money value transfer services, are required to conduct customer due diligence when establishing business relationships or carrying out occasional transactions above prescribed thresholds. Financial institutions are further required to keep records on customer identification documents, transactions and business correspondences for a specified period. Relevant authorities designated under the AMLO are empowered to conduct compliance inspection, access to books and records and initiate investigation into suspected breaches by the respective financial institutions under their purview. Financial institutions are subject to supervisory and/or criminal sanctions upon breaches against the statutory obligations provided under the AMLO.

• In addition, the AMLO also provides for a licensing regime for remittance agents and money changers. Persons who wish to operate remittance services and/or money changing services as a business have to obtain a licence from the licensing authority (i.e. Commissioner of Customs and Excise). Applicants for licenses are subject to a set of fit and proper test. Licences issued are subject to periodic renewal on a two-year basis. Track record of compliance with the statutory obligations under the AMLO is one of the factors to be considered by the licensing authority in licence renewal.

• The implementation of the preventive measures under the AMLO facilitates financial institutions to know their customers so that they can better apprehend and assess money laundering risks in business relationships for preventing money laundering abuses and illicit activities.

• Art. 14(2) Implement feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders.

• The Hong Kong Police Force (the Police) and the Customs and Excise Department (C&ED) act on intelligence about suspected tainted funds being moved across HKC's boundary. Such intelligence is derived from many sources, including suspicious transaction reports referred to the Police or the C&ED for follow-up. In the Laws of Hong Kong, the Customs and Excise Service Ordinance, Chapter 342, the Import and Export Ordinance, Chapter 60, and the Police Force Ordinance, Chapter 232 provide the concerned law enforcement agencies with the general power to stop, search, and question individuals suspected of carrying drug/crime proceeds and terrorist property into or out of HKC. In addition, the Drug Trafficking (Recovery of Proceeds) Ordinance, Chapter 405, the Organized and Serious Crimes Ordinance (OSCO), Chapter 455, and the United Nations (Anti-Terrorism Measures) Ordinance, Chapter 575, provide the broad framework for seizure, detention, restraint and confiscation of currency and bearer negotiable instrument, which is suspected or found to be proceeds of crime, or terrorist property.

• Art. 14(3) Implement appropriate and feasible measures to require financial institutions, including money remitters, to:

(a) include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;
(b) maintain such information throughout the payment chain; and
(c) apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

• The AMLO also includes specific provisions to implement the requirements under the FATF Special Recommendation VII concerning wire transfers. Financial institutions are required to record and verify the identity of the originator with reference to identification document number before carrying out wire transfers of HK$8,000 or above. The information of the originators has to be included in the message and payment forms accompanying the wire transfers. As the beneficiary institutions receiving incoming funds, if the originator's information is not accompanied with the wire transfers, financial institutions must obtain the relevant information from the institution from which it receives the transfer instruction. If the missing information cannot be obtained, financial institutions are required to take reasonable measures to mitigate the money laundering/terrorist financing risk for that wire transfer or to consider restricting or terminating relationship with the institution from which it receives the transfer instruction. Financial institutions are also required to take

reasonable measures to mitigate the money laundering/terrorist financing risk where the financial institution is aware that the information accompanying the wire transfer is incomplete or meaningless.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

- HKC is taking steps to establish an appropriate disclosure and/or declaration system for cross-boundary movement of currency or bearer negotiable instrument in line with FATF's requirements, having conducted comprehensive research on overseas models and practices and reviewed local circumstances. The target is to map out the way forward as soon as possible in 2012.

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

- For its ongoing commitment to capacity building for the financial sectors, HKC has been organising annual AML seminars for the financial sectors. In 2011, around 1,400 participants attended the seminars. The next annual series of AML seminars are scheduled to run in September/October 2012.

II. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO APEC INTEGRITY STANDARDS (CROSS CHECK WITH I.A. ABOVE)

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LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Strengthen Measures to Effectively Prevent and Fight Corruption and Ensure Transparency by Recommending and Assisting Member Economies to:

- Establish objective and transparent criteria that assure openness for merit, equity, efficiency for the recruitment of civil servants, and promote the highest levels of competence and integrity;
- Adopt all necessary measures to enhance the transparency of public administration, particularly with regard to organization, functioning and decision-making processes;
- Develop and implement appropriate public financial disclosure mechanisms or codes of conduct for senior-level public officials [SOM III: Guidelines]

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

- **Establish objective and transparent criteria that assure openness for merit, equity, efficiency for the recruitment of civil servants, and promote the highest levels of competence and integrity**
- CSB updated the guidelines on the recruitment and promotion of civil servants in 2011. The entry system for new recruits was also modified in the same year. Individual Heads of Departments/Heads of Grade, being the appointment authority of the grades under their purview, are required to follow the established guidelines in conducting recruitment exercises.
- The PSC helps to ensure that civil service appointment decisions are made upon fair, impartial, meticulous and thorough deliberations and in accordance with the prevailing policies and requirements.
- In 2009, the ICAC compiled a corruption prevention checklist on staff recruitment to assist government departments in adopting corruption prevention measures in the recruitment of contract staff.
- To sustain and strengthen an ethical culture in the civil service, the ICAC delivered a talk on conflict of interest at a workshop organized in 2011 for senior officers of government departments. In late 2011, the ICAC assisted CSB in producing a booklet on the common law offence of Misconduct in Public Office to enhance civil servants' awareness of the offence. The booklet will be published by CSB in mid 2012.

- **Adopt all necessary measures to enhance the transparency of public administration, particularly with regard to organization, functioning and decision-making processes;**

• CSB has included public suspicion of "deferred reward" in the policy objectives and vetting criteria for post-service outside work applications under the improved control regime. Measures have been taken to increase the transparency of information on approved and taken-up applications with a view to enhancing the credibility of the improved control regime. CSB will continue to enhance the integrity of the civil service and remind civil servants of the need to observe good practices when taking up post-service outside work and to avoid conflict of interest when considering post-service outside work.

• In line with the Government's commitment to openness, transparency and accountability, all bureaux and departments produce their home pages in Chinese and English to disseminate information through the Internet on its policies, services and activities and to communicate with the public. Thematic home pages are also produced for special events and topics. These home pages can be accessed through the Government's one-stop portal, GovHK (at http://www.gov.hk), which have both desktop and mobile versions.

• HKC also maintains a high level of transparency of laws, regulations and administrative procedures. Statutory notices for the appointment of senior public officers, departmental notices and public tenders; ordinances, regulations and bills; periodical lists for professionals, institutions, etc; draft bills and executive orders; and public notices are published regularly in the Government Gazette which can be accessed by the public free of charge at http://www.gld.gov.hk/egazette/.

• All principal Ordinances and subsidiary legislation that are currently in force are also published in the Loose-leaf Edition of the Laws of Hong Kong. The Bilingual Laws Information System, known as BLIS, website at http://www.legislation.gov.hk, provides free online access to all principal Ordinances and subsidiary legislation currently in force in HKC as well as their historical versions dated back to 30 June 1997.

• The Government will consult the public and relevant stakeholders when it formulates and reviews major policies. If public consultation is needed, the relevant subject bureaux and departments will take the lead in deciding how to gauge public opinions on different policies. Channels to gauge public opinions used by the lead bureaux and departments may include consultations with the Legislative Council, relevant District Councils, advisory boards and committees, other organisations, political parties and individuals concerned, etc. The Home Affairs Department will also assist the lead bureaux and departments in formulating public consultation strategies and conducting the consultation, including consultation with District Councils, as and when necessary.

• It is the Government's policy to make available as much as possible so that the public can better understand how public policies are formulated and implemented. The Code on Access to Information defines the scope of information which government bureaux and departments are to provide, either routinely or on request, and sets out procedures and timeframes by which such information is to be made available. It authorizes and requires bureaux and departments to provide the public with information requested unless there are valid reasons to withhold disclosure (related to commercial interests, third party or privacy of an individual).

• In addition to the various levels of courts and tribunals which form the Judiciary of HKC, a number of Ordinances establish tribunals to deal specifically with appeals against administrative decisions. The Administrative Appeals Board Ordinance, Chapter 442 of the Laws of Hong Kong, which was enacted in 1994, established an independent Administrative Appeals Board (AAB). It handles a wide range of statutory appeals against certain administrative decisions. At present, appeals under 70 pieces of legislations are put under the jurisdiction of the AAB. AAB comprises members with legal expertise and a wide spectrum of experience. Unless under very special circumstances, AAB conducts open hearings and the disputed parties are allowed to attend and be represented in these hearings. AAB is required to state in writing all its decisions as well as the reasons for these decisions.

• The Office of The Ombudsman (The Ombudsman) is an independent statutory authority, established in 1989 under The Ombudsman Ordinance, Chapter 397 of the Laws of Hong Kong, to redress grievances arising from maladministration in the public sector through independent and impartial investigations to improve the standard of public administration. Apart from handling individual complaints, The Ombudsman is empowered to initiate direct investigations. In December 2001, the office severed its links with the Administration and has since become a corporation sole. It has set up its own administrative system and now employs contract staff on terms and conditions determined by The Ombudsman. At present, The Ombudsman's jurisdiction includes nearly all government departments and 23 statutory bodies.

• **Develop and implement appropriate public financial disclosure mechanisms or codes of conduct for senior-level public officials [SOM III: Guidelines];**

• CSB has promulgated the Civil Service Code to all staff in the civil service. The Code sets out, among others, the core values and standards of conduct which civil servants are expected to uphold. The Administration and the ICAC have also promulgated and kept under constant review of specific regulations, rules, operational procedures and guidelines on civil service conduct matters including conflict of interest, acceptance of advantages and declaration of investments, etc.

• Civil servants are required to avoid conflict of interest between personal interest and official duties. They shall declare to their supervisors if such situations arise. Civil servants filling designated posts are also required to declare, on a regular basis, their private investments. The most senior positions in the civil service are subject to additional requirement to register, on appointment and annually thereafter, their financial interests for public inspection on request.

• Under the Ethical Leadership Programme co-organised by the ICAC and CSB,

a workshop on conflict of interest was conducted in January 2011 for Ethics Officers who are directorate officers nominated by individual bureaux/departments and Assistant Ethics Officers for coordinating staff integrity promotion initiatives within their bureaux/departments. As an integral part of CSB's efforts in promoting integrity management under the programme, a dedicated intranet known as the Online Community for Ethics Officers (OCEO) has been launched. Apart from providing a rich collection of literatures and training materials on conduct, discipline and integrity matters, the OCEO serves as a platform enabling online exchange of experience and views among bureaux/departments. To further promote the usage of the OCEO, CSB has extended access to the OCEO to other officers responsible for human resource matters in bureaux/departments.

- To help senior management to better focus on integrity management in their organisations, CSB and the ICAC will conduct joint visits and presentations to individual bureaux/departments under the Ethical Leadership Programme. The last visit was held in January 2012.
- New examples of acts of misconduct that staff are advised to avoid was uploaded to the RCIM intranet in December 2011.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

- CSB will from time to time review the recruitment policy in light of actual experience reflected by Heads of Departments/Heads of Grades and advice offered by the PSC, to ensure that the policies and guidelines meet up-to-date service needs and statutory requirements.
- To facilitate exchange of views and experience-sharing on common concerns amongst Ethics Officers and Assistant Ethics Officers, regular workshops on different topics will be organised. The next workshop is planned for the latter half of 2012.
- CSB will continue to enhance the content of the RCIM as a central repository of best practices adopted by bureaux/departments in integrity management.
- CSB plans to publish a booklet on the common law offence of Misconduct in Public Office for civil servants' reference in mid-2012 in order to enhance their awareness and understanding of this offence.
- CSTDI will continue to provide training programmes to promote integrity and core values of the civil service on a regular basis.

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

- HKC is firmly committed to upholding high standards of integrity and probity in the civil service. CSB and the ICAC will continue to work closely with bureaux/departments through a proven three-pronged strategy (namely prevention, education and sanction) to promote integrity in the civil service.

III. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO SAFE HAVENS (CROSS CHECK WITH I.C. ABOVE):

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LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Deny safe haven to officials and individuals guilty of public corruption, those who corrupt them, and their assets:

- Promote cooperation among financial intelligence units of APEC members including, where appropriate, through existing institutional mechanisms.
- Encourage each economy to promulgate rules to deny entry and safe haven, when appropriate, to Officials and individuals guilty of public corruption, those who corrupt them, and their assets.
- Implement, as appropriate, the revised Financial Action Task Force (FATF) 40 Recommendations and FATF's Special Recommendations (Santiago Course of Action)
- Work cooperatively to investigate and prosecute corruption offenses and to trace freeze, and recover the proceeds of corruption (Santiago Course of Action)
- Implement relevant provisions of UNCAC. These include:
  - o Art. 14 (Money laundering)
  - o Art. 23 (Laundering of Proceeds of Crime)
  - o Art. 31 (Freezing, seizure and confiscation)
  - o Art. 40 (Bank Secrecy)
  - o Chapter V (Asset Recovery)

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Santiago Commitment/COA: Deny safe haven to officials and individuals guilty of public corruption, those who corrupt them, and their assets:

- Promote cooperation among financial intelligence units of APEC members including, where appropriate, through existing institutional mechanisms.
- The Joint Financial Intelligence Unit (JFIU) of HKC has been established in the Narcotics Bureau of the Police since 1989. JFIU is jointly operated by the Police and C&ED. HKC, represented by JFIU, has been a member of the Egmont Group of FIUs since 1996 and attended the annual plenary meetings to enhance understanding and co-operation with FIUs around the world including the FIUs of APEC member economies. Whenever JFIU comes across financial intelligence in relation to corruption activities, the intelligence will be referred to the ICAC. If it is necessary, JFIU will assist the ICAC to gather information from the FIUs of other jurisdictions including those in APEC member economies.
- Encourage each economy to promulgate rules to deny entry and safe haven, when appropriate, to Officials and individuals guilty of public corruption, those who corrupt them, and their assets.
- HKC has the legal capacity to provide extradition and mutual legal assistance in both public and private sectors corruption offences to other jurisdictions, under the Fugitive Offenders Ordinance, Chapter 503, and the MLA Ordinance, Chapter 525, respectively.
- HKC already has full legal capability to provide extradition for all corruption offences and other offences covered by the UNCAC on a bilateral basis with existing treaty partners under other fugitive offender arrangements.
- On 21 December 2007, the Fugitive Offenders (Corruption) Order came into force. This Order applies the procedures in the Fugitive Offenders Ordinance, Chapter 503, to allow for extradition for all offences covered by the UNCAC with other State Parties to the Convention on a multilateral basis.
- On 22 February 2008, the Mutual Legal Assistance in Criminal Matters (Corruption) Order came into force. This Order applies the procedures in the Mutual Legal Assistance in Criminal Matters Ordinance (MLA Ordinance), Chapter 525 of the Laws of Hong Kong, to allow mutual legal assistance (including the return and sharing of recovered assets) for all offences covered by the UNCAC with other State Parties to the Convention on a multilateral basis.
- Implement, as appropriate, the revised Financial Action Task Force (FATF) 40 Recommendations and FATF's Special Recommendations (Santiago Course of Action)
- HKC has been a member of FATF since 1991. It is also a member of The Asia/Pacific Group on Money Laundering.
- HKC is fully committed to the implementation of the FATF Recommendations. HKC had undergone the joint mutual evaluation (ME) process by FATF and the Asia/Pacific Group on Money Laundering in 2008. The 2008 ME generally recognized the strengths of HKC's AML regime but identified a number of areas of improvement on which HKC should take appropriate follow-up actions. Since 2008, HKC has been making keen efforts to enhance its regime to address the deficiencies identified in the ME in line with the FATF Recommendations.

- Work cooperatively to investigate and prosecute corruption offenses and to trace freeze, and recover the proceeds of corruption (Santiago Course of Action)
- HKC has full legal capabilities, in accordance with mechanisms provided in the UNCAC and domestic law, to investigate and prosecute corruption offences and to recover proceeds of corruption.
- The ICAC is given full powers under the ICAC Ordinance and POBO to investigate both public and private sectors corruption offences.
- All prosecutions for corruption offences require the consent of the Secretary for Justice; and the Department of Justice provides counsel to advise and prosecute cases in court.
- The ICAC has power to trace the proceeds of corruption and where they are identified, to apply to court for orders to freeze these proceeds. On the conviction of corruption offence(s), the court may make an order of restitution against the convicted person or if the proceeds of corruption are seized or restrained, order their confiscation. These statutory powers are contained in the Laws of Hong Kong under the ICAC Ordinance, Chapter 204, the POBO, Chapter 201, the CPO, Chapter 221, and the OSCO, Chapter 455.
- As at April 2012, HKC has signed Mutual Legal Assistance Agreements with 27 countries whereas 26 of them have come into force under the MLA Ordinance, Chapter 525 of the Laws of Hong Kong. Of the 27 countries, 10 of them are APEC member economies.

- Implement relevant provisions of UNCAC. These include:
- Art. 14 (Money laundering)

  (See response in Section I.C above)
- Art. 23 (Laundering of Proceeds of Crime)
- Money laundering is a criminal offence under Section 25 of the OSCO. It is an offence for a person to deal in property "knowing or having reasonable grounds to believe" that the property "in whole or in part directly or indirectly represents any person's proceeds of indictable offence". Under the OSCO, "dealing" includes receipt or acquisition, concealment, disposal or conversion, movement into or out of HKC and use as security. In addition, Section 25A of the OSCO imposes an obligation on any person to report his or her knowledge or suspicion that property may be related to an indictable offence.
- Art. 31 (Freezing, seizure and confiscation)

- HKC is compliant by virtue of Parts III and IV of the OSCO and Sections 12, 12AA and 14C of POBO.
- Art. 40 (Bank Secrecy)
- HKC is compliant by virtue of Sections 13 and 14 of the POBO that empowers the ICAC to have access to records of banking and financial institutions.
- Under Section 13(1) of the POBO, the Commissioner of ICAC is empowered to authorize ICAC officers in writing to investigate, inspect and require the production of accounts of any kind. This includes documents, banker's books, company books and other articles relating to any person named or otherwise identified in the authorization, where the Commissioner has reasonable cause to believe that a POBO offence may have been committed.
- Under Section 14(1)(f) of the POBO, the Commissioner of ICAC is empowered to require the manager of any bank to supply copies of accounts of the suspect and his family members.
- In HKC, there are no financial institution secrecy provisions that inhibit the implementation of the FATF Recommendations within the regulated sectors as reported in the FATF ME on HKC in 2008.
- Chapter V (Asset Recovery)
- The JFIU of HKC has disseminated information on possible corruption offences to overseas jurisdictions.
- UNCAC became part of the law of HKC under the Mutual Legal Assistance in Criminal Matters (Corruption) Order on 22 February 2008. State Parties may make a request to HKC pursuant to Articles 54, 55 and 57 of UNCAC.
- Pursuant to UNCAC, requests for surrender may be made for officials and individuals guilty of public corruption, and those who corrupt them; and requests for recovery of their assets may also be made.
- Pursuant to UNCAC, requests may be made for evidence for use in investigation and prosecution of corruption offences, and for tracing, freezing and recovery of proceeds of corruption.
- HKC is compliant also by virtue of Sections 102 and 106 of the CPO, Chapter 221 of the Laws of Hong Kong.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

- HKC will continue to negotiate bilateral agreements with other jurisdictions for surrender of fugitive offenders and mutual legal assistance in criminal matters to further strengthen HKC's bilateral legal framework for international cooperation.

IV. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO PRIVATE SECTOR CORRUPTION:

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LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Fight both Public and Private Sector Corruption:

- Develop effective actions to fight all forms of bribery, taking into account the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or other relevant anticorruption conventions or initiatives.
- Adopt and encourage measures to prevent corruption by improving accounting, inspecting, and auditing standards in both the public and private sectors in accordance with provisions of the UNCAC.
- Support the recommendations of the APEC Business Advisory Council (ABAC) to operate their business affairs with the highest level of integrity and to implement effective anticorruption measures in their businesses, wherever they operate.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Santiago Commitment/COA: Fight both Public and Private Sector Corruption:

- Develop effective actions to fight all forms of bribery, taking into account the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or other relevant anticorruption conventions or initiatives.
- HKC's anti-corruption law, the POBO, Chapter 201 of the Laws of Hong Kong, criminalizes corruption in both the public and private sectors.
- Regarding the bribery of foreign public officials, prosecution under Section 9 of the POBO is possible if the crime is committed within the jurisdiction of HKC. If the crime is committed outside HKC's jurisdiction, HKC can extradite any person to any jurisdiction where that person has engaged in the bribery of a foreign public official in that jurisdiction pursuant to bilateral or multilateral arrangements such as the UNCAC, subject to relevant arrangements under the Fugitive Offenders Ordinance.

- Adopt and encourage measures to prevent corruption by improving accounting, inspecting, and auditing standards in both the public and private sectors in accordance with provisions of the UNCAC.
- With regard to public finance, the accounting, inspecting and auditing standards are established by the relevant statutes, mainly the Public Finance Ordinance, Chapter 2 of the Laws of Hong Kong and the Audit Ordinance, Chapter 122 of the Laws of Hong Kong. Pursuant to the relevant statutory provisions, administrative regulations, directions and instructions are issued to government departments to prescribe the requirements regarding the control and management of public finances and for the safety, economy and advantage of public monies and Government property. Such administrative regulations, directions and instructions include the Financial and Accounting Regulations, the Standing Accounting Instructions, the Stores and Procurement Regulations and the various circulars and circular memoranda.
- In the private sector, the Hong Kong Institute of Certified Public Accountants (HKICPA) has achieved a full convergence of the Hong Kong Financial Reporting Standards and the Hong Kong Standards of Auditing with international standards since 2005. It has also adopted a policy of achieving full convergence of its ethics standards with international standards. To update members on the latest development of its ethical standards, HKICPA and the ICAC have conducted Code of Ethics sessions for members of HKICPA since July 2010.
- A forensics forum has been set up by the HKICPA for members to discuss different topics of interests including the impact of anti-corruption legislations in the global arena and the implementation of new developments, etc. HKICPA also issued a bulletin in 2006 relating to AML.

- Support the recommendations of the APEC Business Advisory Council (ABAC) to operate their business affairs with the highest level of integrity and to implement effective anticorruption measures in their businesses, wherever they operate.
- The ICAC organizes corruption prevention and ethics promotion programmes/activities, tailor-made for different trades and professions in the business sector to encourage business operators and corporate leaders to uphold integrity and implement effective anti-corruption measures in their businesses. In 2011, the ICAC jointly co-organized a SME Conference with Guangdong Provincial People's Procuratorate of China and Commission Against Corruption of Macao, China for some 200 SME entrepreneurs of local and foreign chambers of commerce in the Pearl River Delta region to strengthen their understanding of the anti-corruption laws in the region and raise their alertness to corruption risks. Besides, the ICAC maintains a regular network with 70 chambers of commerce and trade associations in HKC which assist in promulgating anti-corruption messages to about 40,000 SMEs in HKC.
- The ICAC also offers advice to private companies in improving their internal controls to safeguard against corruption and malpractice. The advice is free of charge, confidential, and tailor-made to meet the specific needs of the organization. In 2011, the ICAC provided advisory services to private companies/organizations on over 390 occasions. These companies / organizations range from small to medium size enterprises to multi-national corporations.
- The ICAC recognizes that business operators, managers and practitioners play an important role in helping their companies prevent corruption and adopt good internal control practices. To enhance their capacity in this regard, the ICAC partnered with trade associations, regulators and professional institutes to provide corruption prevention training to relevant business practitioners on a regular basis.
- The ICAC has also developed a series of BPMs for distribution to the private companies to promulgate effective internal controls and good corporate governance. The BPMs are available on the ICAC website for download by the members of public. In 2011, the following BPMs have been developed and promulgated :
- a BPC in relation to the operation of estate agencies, with a view to strengthening corporate governance and internal control measures in estate agencies;
- a Corruption Prevention Guide which covers anti-bribery laws, industry standards and requirements, corporate governance principles, internal control measures, and sample code of conduct for stakeholders of the testing and certification industry;
- a Practical Guide for managing the sales of high demand goods for reference by retail operators so as to enhance their system control and prevent corrupt practices; and
- a Practical Guide for use by private hospitals, aiming to help enhancing the control mechanism and promoting good practices in the management of obstetric services.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

- HKICPA will continue to accord a high priority to specialist areas of practice, professional ethics, including the prevention of bribery and corruption. For example, ethics is incorporated as part of the programme in the new professional qualifications in the specialist fields of practice being developed by HKICPA. Furthermore, HKICPA will run regular seminars for members on AML requirements and is developing more guidance for members in this area. Members will be kept updated with international AML-related notices, trade transactions and ethics related matters through its publication.
- The ICAC will continue to provide tailor-made corruption prevention advice to private companies to promote good corporate governance and assist the compa-

nies in implementing effective corruption resistant procedures and practices.

• The ICAC will continue to approach specific trades and industries through respective associations or professional bodies to jointly organise corruption prevention campaign and capacity building training to promulgate good corporate governance and effective internal control with a view to reducing the risks of corruption. Planned campaigns/projects include :

(a) In association with the relevant regulatory agency, the ICAC will organize seminars for estate agents to assist them in understanding the contents of the BPC and implementing effective anti-corruption measures in their business.

(b) In collaboration with the Chinese medicine associations, the ICAC will organise seminars/workshops to promote ethical practices and enhance corruption prevention awareness among the Chinese medical practitioners.

(c) To further promulgate the Corruption Prevention Guide for the testing and certification industry, in 2012, the ICAC will continue to collaborate with major professional bodies to assist these companies in implementing the corporate governance practices and strengthening internal control as recommended in the Guide.

(d) The ICAC will jointly produce with Guangdong Provincial People's Procuratorate of China and Commission Against Corruption of Macao, China a new legal guide for SMEs in late 2012 to raise their awareness to the legal requirements on anti-corruption in different jurisdictions and encourage them to adopt ethical business practices when conducting cross-boundary business.

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

• The ICAC will continue to partner with related trade associations, chambers of commerce, professional bodies and regulators to provide tailor-made corruption prevention and education service for different trades and professions in the business sector.

V. ENHANCING REGIONAL COOPERATION

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LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Strengthen Cooperation Among APEC Member Economies to Combat Corruption and Ensure Transparency in the Region:

• Promote regional cooperation on extradition, mutual legal assistance and the recovery and return of proceeds of corruption.

• Afford one another the widest measure of mutual legal assistance, in investigations, prosecutions and judicial proceedings related to corruption and other offences covered by the UNCAC.

• Designate appropriate authorities in each economy, with comparable powers on fighting corruption, to include cooperation among judicial and law enforcement agencies and seek to establish a functioning regional network of such authorities.

• Sign bilateral and multilateral agreements that will provide for assistance and cooperation in areas covered by the UNCAC. (Santiago Course of Action) These include:

- Art. 44 – Extradition
- Art. 46 – Mutual Legal Assistance
- Art. 48 – Law Enforcement Cooperation
- Art. 54 – Mechanisms for recovery of property through international cooperation in confiscation
- Art. 55 – International Cooperation for Purposes of Confiscation

• Work together and intensify actions to fight corruption and ensure transparency in APEC, especially by means of cooperation and the exchange of information, to promote implementation strategies for existing anticorruption and transparency commitments adopted by our governments, and to coordinate work across all relevant groups within APEC (e.g., SOM, ABAC, CTI, IPEG, LSIF, and SMEWG).

• Coordinate, where appropriate, with other anticorruption and transparency initiatives including the UNCAC, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, FATF, the ADB/OECD Anticorruption Action Plan for the Asia Pacific region, and Inter-American Convention Against Corruption.

• Recommend closer APEC cooperation, where appropriate, with the OECD including a joint APEC-OECD seminar on anticorruption, and similarly to explore joint partnerships, seminars, and workshops with the UN, ADB, OAS, the World Bank, ASEAN, and The World Bank, and other appropriate multilateral intergovernmental organizations.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Santiago Commitment/COA: Strengthen Cooperation Among APEC Member Economies to Combat Corruption and Ensure Transparency in the Region:

• Promote regional cooperation on extradition, mutual legal assistance and the recovery and return of proceeds of corruption.
(See responses in Section I.C and III above)

• Afford one another the widest measure of mutual legal assistance, in investigations, prosecutions and judicial proceedings related to corruption and other offences covered by the UNCAC.

- From time to time, the ICAC renders assistance to overseas jurisdictions in relation to the investigation and prosecution of corruption related crimes, and proceedings related to criminal matters under the MLA Ordinance and the UNCAC. The Mutual Legal Assistant Unit (MLA Unit) of the Department of Justice is the Central Authority of HKC in coordinating the requests from overseas jurisdictions under the MLA Ordinance and UNCAC.

(Also see responses in Sections I.C and III above)

• Designate appropriate authorities in each economy, with comparable powers on fighting corruption, to include cooperation among judicial and law enforcement agencies and seek to establish a functioning regional network of such authorities.

• The ICAC is an independent law enforcement agency set up in HKC to combat corruption and related crimes in both the public and private sectors. It is armed with the necessary statutory power for the investigation of such offences.

- HKC has designated the MLA Unit under the International Law Division of the Department of Justice as the Central Authority to handle all requests for mutual legal assistance and extradition.
- The MLA Unit is staffed by legal counsel responsible for processing all incoming and outgoing requests for legal assistance and extradition, and for liaising with foreign counterparts on a case by case basis as well as general networking to enhance operational capabilities.
- Corruption related cases are passed to the ICAC as the appropriate law enforcement agency in HKC to facilitate incoming requests for assistance. Counsel in the MLA Unit and the ICAC work together to provide the required assistance in relation to corruption cases, including making the necessary applications and appearances in court for orders for those forms of assistance requiring compulsory measures.
- The ICAC also maintains regular operational liaison with its counterparts and other law enforcement agencies in the Asia Pacific region and in other parts of the world, and offers assistance as and when required in the investigation of corruption cases.
- HKC is represented by the ICAC on the APEC ACT Working Group (ACTWG) to join efforts with other member economies to combat corruption and promote transparency.

• Sign bilateral and multilateral agreements that will provide for assistance and cooperation in areas covered by the UNCAC. (Santiago Course of Action) These include:

- Art. 44 – Extradition
- Art. 46 – Mutual Legal Assistance

• Requests for surrender and mutual legal assistance including recovery or sharing of proceeds of corruption may be made pursuant to UNCAC.

• HKC provides a wide range of mutual legal assistance in investigations, prosecutions and judicial proceedings related to corruption and other offences covered by the UNCAC.

• The mutual legal assistance that HKC can provide includes the mechanisms for recovery of property through international cooperation in confiscation and international cooperation for purposes of confiscation.

• HKC has an active and on-going bilateral negotiation programme for the surrender of fugitive offenders and for mutual legal assistance.

• As at April 2012, HKC has signed the Surrender of Fugitive Offenders Agreements with 18 countries whereas 17 of them have come into force under the Fugitive Offenders Ordinance, Chapter 503 of the Laws of Hong Kong. Of the 18 countries, nine of them are APEC member economies.

• As at April 2012, HKC has signed Mutual Legal Assistance Agreements with 27 countries whereas 26 of them have come into force under the MLA Ordinance, Chapter 525 of the Laws of Hong Kong. Of the 27 countries, 10 of them are APEC member economies.

- Art. 48 – Law Enforcement Cooperation
(See response above in this Section)

- Art. 54 – Mechanisms for recovery of property through international cooperation in confiscation
(See response above in this Section)

- Art. 55 – International Cooperation for Purposes of Confiscation
(See response above in this Section)

• Work together and intensify actions to fight corruption and ensure transparency in APEC, especially by means of cooperation and the exchange of information, to promote implementation strategies for existing anticorruption and transparency commitments adopted by our governments, and to coordinate work across all relevant groups within APEC (e.g., SOM, ABAC, CTI, IPEG, LSIF, and SMEWG).

• HKC, represented by the ICAC at the ACTWG forum, is committed to combating corruption and promoting transparency. In collaboration with other ACTWG members, HKC seeks to work closely with all relevant groups within APEC to fight corruption and ensure transparency.

• To provide a platform for experience sharing and facilitating research and analytical studies on issues pertaining to the development of anti-corruption initiatives locally, regionally and internationally, the ICAC established the Centre of Anti-Corruption Studies (CACS) in 2009. The CACS : –

• is a research institute established under the auspices of the ICAC;

• provides resources for the study and analysis of issues pertaining to the fight against corruption in HKC and internationally; and

• serves as a platform for collaboration with international and Mainland anti-corruption organisations and academic institutions.

• To mark the inauguration of the CACS, an opening ceremony together with an affiliated two-day seminar was organised in April 2009 to promote exchange among Mainland China, overseas and local academics on issues related to anti-corruption. The opening ceremony cum seminar was attended by over 200 overseas and local delegates. In addition, the CACS organized the "Collaborative Governance & Integrity Management" Conference attended by over 200 overseas and local delegates in September 2010.

• The ICAC shares knowledge and experience of its anti-corruption work and business ethics promotion strategies with other jurisdictions through its websites, e-publicity channels and meetings with overseas visitors. In the last three years, ICAC received visitors from Mainland China and overseas jurisdictions, including delegations from 15 APEC member economies.

• The ICAC also participated intensely in international exchange on corruption prevention and business ethics promotion with both law enforcement agencies and non-governmental organisations worldwide.

• Coordinate, where appropriate, with other anticorruption and transparency initiatives including the UNCAC, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, FATF, the ADB/OECD Anti-corruption Action Plan for the Asia Pacific region, and Inter-American Convention Against Corruption.

• HKC is a member of the Steering Group of ADB/OECD Anti-Corruption Initiative for Asia and the Pacific.

• The ICAC has also participated in the various meetings and events of the International Association of Anti-Corruption Authorities (IAACA), and sent representatives to attend the IAACA meetings/conferences.

• In December 2011, the ICAC launched an international anti-corruption public announcement videos competition among IAACA member organizations and a workshop in HKC, which was an initiative to tie in with one of the targeted actions in the proposed Work Plan of IAACA in raising public awareness of the fight against corruption through production of promotion materials. Over 200 anti-corruption and media experts attended including representatives from 12 APEC member economies.

• HKC has been a member of FATF since 1991 and a member of the Asia/Pacific Group on Money Laundering.

• HKC, represented by the ICAC, was a member of the FATF/APG Project Group on Corruption which was formed in late 2005 to research into the link between corruption and money laundering.

• The HKEDC of the ICAC shares knowledge and experience in the promotion of business and professional ethics with other jurisdictions through its website, e-newsletters and e-alerts; reception of overseas visitors; visits to other jurisdictions and participation in international conferences.

• Recommend closer APEC cooperation, where appropriate, with the OECD including a joint APEC-OECD seminar on anticorruption, and similarly to explore joint partnerships, seminars, and workshops with the UN, ADB, OAS, the World Bank, ASEAN, and The World Bank, and other appropriate multilateral intergovernmental organizations.

• The ICAC of HKC has participated in regional/international anti-corruption forums to share its experience in fighting corruption and promoting transparency.

• The ICAC organizes international symposia on a regular basis to provide a platform for delegates from different parts of the world to share knowledge and experiences in combating corruption and related crimes, promoting transparency and governance.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

• HKC will continue to negotiate bilateral agreements with other jurisdictions for surrender of fugitive offenders and mutual legal assistance in criminal matters to further strengthen HKC's bilateral legal framework for international cooperation.

• HKC will continue to support the anti-corruption and transparency initiatives of various regional/international organizations, and participate in overseas

conferences or workshops for experience and knowledge sharing in combating corruption and promoting transparency.

- The ICAC will continue to organize international symposia for experience sharing and exchange of views. It has held its 5th Symposium on 9-11 May 2012.
- As an on-going initiative, the ICAC will continue to receive visitors from various overseas jurisdictions, including APEC member economies, and to participate in regional/ international exchanges on combating corruption, promoting transparency and business ethics.

VI. OTHER APEC ACT LEADERS' AND MINISTERS' COMMITMENTS

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LEADERS' AND MINISTERS' COMMITMENTS

- **2005**: Ministers encouraged all APEC member economies **to take all appropriate steps towards effective ratification and implementation, where appropriate, of the United Nations Convention against Corruption (UNCAC)**. Ministers encouraged relevant APEC member economies to make the UNCAC a major priority. They urged all member economies to submit brief annual progress reports to the ACT Task Force on their APEC anti-corruption commitments, including a more concrete roadmap for accelerating the implementation and tracking progress. (See Section I Above, UNCAC)
- **2006**: Ministers underscored their commitment **to prosecute acts of corruption, especially high-level corruption by holders of public office and those who corrupt them**. In this regard, Ministers commended the results of the Workshop on Denial of Safe Haven: Asset Recovery and Extradition held in Shanghai in April 2006. Ministers agreed to consider developing domestic actions, in accordance with member economy's legislation, to deny safe haven to corrupt individuals and those who corrupt them and prevent them from gaining access to the fruits of their corrupt activities in the financial systems, including by implementing effective controls to deny access by corrupt officials to the international financial systems.
- **2007**: We endorsed a model **Code of Conduct for Business, a model Code of Conduct Principles for Public Officials and complementary Anti-Corruption Principles for the Private and Public Sectors**. We encouraged all economies **to implement these codes** and welcomed agreement by Australia, Chile and Viet Nam to pilot the Code of Conduct for Business in their small and medium enterprise (SME) sectors. (AELM, AMM)
- **2008**: We commended efforts undertaken by member economies to develop comprehensive anti-corruption strategies including efforts to restore public trust, ensure government and market integrity. We are also committed **to dismantle transnational illicit networks and protect our economies against abuse of our financial system by corrupt individuals and organized criminal groups through financial intelligence and law enforcement cooperation related to corrupt payments and illicit financial flows.** We agreed to further strengthen international cooperation to combat corruption and money laundering in accordance with the Financial Action Task Force standards. International legal cooperation is essential in the prevention, investigation, prosecution and punishment of serious corruption and financial crimes as well as the recovery and return of proceeds of corruption. (AELM, AMM)
- **2009**: We welcome the Anti-Corruption and Transparency Experts' Task Force's Singapore **Declaration on Combating Corruption, Strengthening Governance and Enhancing Institutional Integrity, as well as the APEC Guidelines on Enhancing Governance and Anti-Corruption.** We encourage economies **to implement measures** to give practical effect to the Declaration and Guidelines. (AMM)
- **2010:** We agreed to leverage collective action to combat corruption and illicit trade by promoting clean government, fostering market integrity, and strengthening relevant judicial and law enforcement systems. We agreed to deepen our cooperation, especially in regard to discussions on achieving more durable and balanced global growth, increasing capacity building activities in key areas such as combating corruption and bribery, denying safe haven to corrupt officials, strengthening asset recovery efforts, and enhancing transparency in both public and private sectors. We encourage member economies, where applicable, **to ratify the UN Convention against Corruption and UN Convention against Transnational Organized Crime and to take measures to implement their provisions, in accordance with economies legal frameworks to dismantle corrupt and illicit networks across the Asia Pacific region. (AELM, AMM)**

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

- **2007: We endorsed a model Code of Conduct for Business, a model Code of Conduct Principles for Public Officials and complementary Anti-Corruption Principles for the Private and Public Sectors. We encouraged all economies to implement these codes and welcomed agreement by Australia, Chile and Viet Nam to pilot the Code of Conduct for Business in their small and medium enterprise (SME) sectors. (AELM, AMM)**
  - HKC is committed to upkeeping the high ethical and probity standards of public officials.
  - The ICAC has jointly launched integrity entrenchment programmes with CSB to assist government bureaux/ departments in formulating codes of conduct and encouraged them to promote the values and standards of behaviour to staff. As reported by Ethics Officers in 2011, all bureaux and departments had promulgated internal guidelines in the form of code/manual/circulars on conduct-related matters to set the values and standards of behaviour for compliance by their staff.
  - To raise the corruption prevention awareness of public officials and promote ethical practices, the ICAC provides training on corruption preventive measures to public officials holding positions considered especially vulnerable to corruption. In 2011, about 20 training sessions were organized for public officials, covering areas such as the preventive measures and control system for public procurement, managing conflict of interest, and misconduct in public office.
  - The ICAC also provides corruption prevention advice to private companies and assists them in enhancing corporate governance and internal controls that safeguard against corruption and malpractice, and actively encourages and assists private companies to draw up a Code of Conduct for their staff with a view to upholding staff integrity and promoting governance, and a sample Code will be provided for their reference and adoption as appropriate. In particular, all newly listed companies will be approached within three months to promote ethical business practices and ICAC services. About 70% of the listed companies contacted by the ICAC had used its services including formulating/reviewing their code of conduct.
  - HKEDC collaborated with 12 co-organizers, including regulators, major chambers of commerce and professional bodies to launch the "Ethics – The Core Value of Leadership" Training Programme for Directors in 2007 to promote corporate governance to company directors and professionals and encourage the setting of tone on integrity and ethical behaviour at the top level.
  - In 2009, the ICAC, in collaboration with the stakeholders such as the relevant chambers of commerce, developed a BPC on Governance and Internal Control for reference by SMEs, covering a model of good governance and measures to prevent corruption and abuse in areas such as procurement, inventory control, sales operations, etc. A seminar to promulgate the BPC was organized and tailor-made corruption prevention services were also offered to individual SMEs after the seminar.

- **2009: We welcome the Anti-Corruption and Transparency Experts' Task Force's Singapore Declaration on Combating Corruption, Strengthening Governance and Enhancing Institutional Integrity, as well as the APEC Guidelines on Enhancing Governance and Anti-Corruption. We encourage economies to implement measures to give practical effect to the Declaration and Guidelines. (AMM)**
  - The Declaration and Guidelines set out principles and guidelines on enhancing governance and anti-corruption. On corruption prevention, the ICAC regularly reviews public sector systems and procedures to ensure that they are fair, open, accountable and corruption resistant. A total of 71 corruption prevention reviews were completed in 2011. Priority was given to corruption prone areas such as law enforcement, public procurement, licensing and inspection systems, and public works. Apart from that, timely and prompt corruption prevention advice on public polices and systems as well as new legislations was given to government bureaux/departments and public organizations on over 530 occasions.
  - The ICAC also provides advice to private companies to assist them in improving their internal controls and putting in place sound management practices so as to safeguard against corruption and malpractice. The advice is free of charge, confidential, and tailor-made to meet the specific needs of the companies / organizations. In 2011, corruption prevention advice was given in response to a total of 397 requests.
  - The ICAC, in joint efforts with the industries (e.g. trade associations), develops BPMs (e.g. in the form of Corruption Prevention Guides/BPCs) and organizes industry-wide or thematic seminars to promote good governance and corruption prevention measures. In 2010 and 2011, the ICAC, together with the trade associations, organized seminars for the testing and certification industry, the retail industry (focusing on sales of high demand goods) and the private hospitals (focusing on the management of obstetric services) respectively to promulgate corruption prevention measures and industry best practices.

- **2010: We agreed to leverage collective action to combat corruption and illicit trade by promoting clean government, fostering market integrity, and strengthening relevant judicial and law enforcement systems. We agreed to deepen our cooperation, especially in regard to discussions on achieving more durable**

and balanced global growth, increasing capacity building activities in key areas such as combating corruption and bribery, denying safe haven to corrupt officials, strengthening asset recovery efforts, and enhancing transparency in both public and private sectors. We encourage member economies, where applicable, to ratify the UN Convention against Corruption and UN Convention against Transnational Organized Crime and to take measures to implement their provisions, in accordance with economies legal frameworks to dismantle corrupt and illicit networks across the Asia Pacific region. (AELM, AMM)

- The requirements of the UNCAC have been fully implemented by HKC.
- Requests for surrender and mutual legal assistance including recovery or sharing of proceeds of corruption may be made pursuant to UNCAC.
- HKC provides a wide range of mutual legal assistance in investigations, prosecutions and judicial proceedings related to corruption and other offences covered by the UNCAC.
- HKC has signed bilateral and multilateral agreements that will provide for assistance and cooperation in areas covered by the UNCAC, such as extradition, mutual legal assistance, and mechanisms for recovery of property through regional and international cooperation in confiscation.
- The Administration of HKC has already implemented legislative amendments to enable HKC to fully comply with the UN Convention against Transnational Organized Crime.
- HKC has put in place a comprehensive AML regime to prevent money laundering and illicit fund flows/financing in the financial sectors through the implementation of the AMLO.
- The JFIU has all along emphasized the importance of international cooperation. Indeed in 2011, JFIU made use of the Egmont Group platform to exchange financial intelligence in relation to corruption cases.

(Please also refer to the responses to the above respective Sections)

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

- HKC is committed to working closely with other APEC member economies and support the work of the ACTWG to fight corruption and ensure transparency.
- The ICAC will continue to provide capacity building training for public officials to raise their corruption prevention awareness and promote corruption resistant procedures and practices.
- The ICAC will continue to encourage and provide assistance to government bureaux and departments to promulgate code of conduct or integrity management manual to their staff and consolidate a probity culture among civil servants.
- The ICAC will continue to review the public administrative systems and procedures, and offer timely advice to government policies and systems, aiming at preventing corruption and ensuring transparency.
- The ICAC will continue to promote directors' and professional ethics in collaboration with professional bodies and trade associations, and help business organizations, including those with cross-boundary business, to formulate and review codes of conduct and offer advice on how to implement the code effectively.
- The ICAC will also continue to provide advice to the private companies and develop BPMs for various trades/industries.
- The ICAC will continue to provide tailor-made corruption prevention advice to private sector companies and organizations; and together with the trade associations, organize corruption prevention campaigns to promulgate good corporate governance and assist the companies/organizations in implementing effective corruption resistant procedures and sound management practices.

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

See responses in "Further Measures Planned to Implement Commitments" in this Section

ECONOMY: Indonesia
CALENDAR YEAR: 2011
LAST UPDATED: December, 2011

LEADERS' AND MINISTERS' COMMITMENTS

- **2010**: We agreed to enhance our efforts to improve transparency and eliminate corruption, including through regular reporting via ACT and other relevant fora on economies' progress in meeting APEC Leaders' commitments on anti-corruption and transparency.
- **2006**: Ministers endorsed APEC 2006 key deliverables on Prosecuting Corruption, Strengthening Governance and Promoting Market Integrity and encouraged member economies to take actions to realize their commitments. Ministers also encouraged all economies to complete their progress reports on the implementation of ACT commitments by 2007. Ministers welcomed APEC efforts to conduct a stocktaking exercise of bilateral and regional arrangements on anti-corruption in cooperation with relevant international and regional organizations, and encouraged member economies to fully participate in the stocktaking activities.

Objective: Where appropriate, to self-assess progress against APEC Leaders' and Ministers' commitments on anti-corruption, transparency, and integrity and to identify capacity building needs to assist the ACT to identify priority areas for future cooperation.

EXECUTIVE SUMMARY

1. Summary of main achievements/progress in implementing the commitments of APEC Leaders and Ministers on anti-corruption, transparency, and integrity since 2004.

In fight againts corruption, Indonesia focus on two prone areas which are Criminalisation of corruption crime and Corruption Prevention measures.

By the Law No. 31 Year 1999 and Law No. 20 Year 2001, Indonesia has criminalized an important number of corruption offenses. These include active and passive bribery of domestic public officials, abuse of functions, participation in an offense and attempt, embezzlement of property in both public and private sectors, laundering the proceeds of crime, and concealment. A comprehensive range of offenses, including any offense committed abroad and punishable with a penalty of imprisonment for four years or more, is a predicate offense to money laundering.
In the area of prevention, Indonesia has conducted series of efforts targeted both the government officials as well as private sectors include beauracracy reform, administrative system review for relevant government/state institution, encourage local authority to implement the principle of good governance and integrity zone, conduct corruption mapping through integrity survey and anti corruption initiative assessment focused on corruption prone areas, simplify procedures and eliminate bribery in public services, introduce e-procurement to increase transparency, encourage and simplify the procedures of gratuity report of government employee and public official by establishing Gratuity Enhancement Program, enlarge the scope of mandatory government official for wealth report, enhance the compliance of wealth reporting for public official in legislative, executive, judicative as well as the managerial level in state owned company, and increase public understanding on national anti-corruption program with public awareness and education through various media.

Indonesia will set out a National Strategies on Corruption Prevention and Eradication as the national platform of fighting against corruption. The strategy could be evaluated by the Corruption Perception Index, the percentage of the National Integrity System Index and percentage of the compliance of domestic law to UNCAC to show the commitment of Indonesia in fighting againts corruption.

2. Summary of forward work program to implement Leaders' and Ministers' commitments.

In 2012, Indonesia would eliminate corruption, promoting transparency in public and private sector, moving forward in the compliance of the UNCAC, improving numbers of assets recovery, and enhancing international cooperation in criminal matters.

3. Summary of capacity building needs and opportunities that would accelerate/strengthen the implementation of APEC Leaders' and Ministers' commitments by your economy and in the region.

Indonesia would wish to have technical assistance in a number of areas, including in corruption prevention and criminalisation, anti money laundering issue, implementation of legal person liability in criminal matters and enhancement of public and private partnership.

I. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO UNCAC PROVISIONS

LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Take All Appropriate Steps Towards Ratification of, or Accession to, and Implementation of the UNCAC:

- Intensify our efforts to combat corruption and other unethical practices, strengthen a culture of transparency, ensure more efficient public management, and complete all appropriate steps to ratify or accede to, and implement the UNCAC.
- Develop training and capacity building efforts to help on the effective implementation of the UNCAC's provisions for fighting corruption.
- Work to strengthen international cooperation in preventing and combating corruption as called for in the UNCAC including extradition, mutual legal assistance, the recovery and return of proceeds of corruption.

I.A. Adopting Preventive Measures (Chapter II, Articles 5-13)

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RELEVANT UNCAC PROVISIONS

- Art. 5(2) Establish and promote effective practices aimed at the prevention of corruption.
- Art. 7(1) Adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials that:

1. Are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;
2. Include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;
3. Promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;
4. Promote education and training programmes to enable them to meet the requirements for the correct, honorable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions.

- Art. 7(4) Adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.
- Art. 8(2) Endeavor to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honorable and proper performance of public functions.
- Art. 8(5) Establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials. Art. 52(5)/(6) [sharing the information on the financial disclosures that should be in place]
- Art. 10(b) Simplify administrative procedures, where appropriate, in order to facilitate public access to the competent decisiona-making authorities.
- Art. 12(2)(b) Promote the development of standards and procedures designed to safeguard the integrity of private entities, including codes of conduct for the correct, honorable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State.
- Art. 12(2)(c) Promote transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities.
- Art. 13(1) Promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

By the Law No. 28 Year 1999 the State Administrator, including State Officials of the High State Institutions, Ministers, Governors, Judges, other State Officials as stipulated by prevailing laws and regulations, and other officials with strategic function in relation to state governance in accordance with the provisions of prevailing laws and regulations, shall be obligated to agree to have his/her wealth investigated prior to, during and after assuming the position and report and declare his/her wealth prior to and after assuming the position. "Other state officials" including Head of the Representatives Office of the Republic of Indonesia overseas with the position of

Extraordinary Plenipotentiary Ambassador, Vice Governor and Regent/Mayor."Other officials with a strategic functions" including Directors, Commissioners and other structural officials in State-Owned and Regional Government Owned Businesses Enterprises, the Head of the Bank of Indonesia and the Head of the National Banking Restructuring Agency (BPPN), Heads of State Universities, Level 1 Officials and other equivalent officials in the ranks of the civil, military, and the Police Force of the Republic of Indonesia, Prosecuting attorneys, investigators, court clerks, project managers, and treasurers.

To broader the coverage of the Wealth Report, KPK requests all ministries, agencies and state-owned enterprises to expand the scope of their mandatory wealth reporting to include even lower levels. Particular attention should be given to officials who are in direct contact with public services and finances.

The Ministry of Finance broader its mandatory reporting requirement by a Ministerial Decree that came into effect in April 2011. Under the Decree, state officials at the Ministry of Finance are required to submit their wealth report at the latest two months after their appointment to a new post, promotion/transfer or retirement. They are also required to report every two years thereon if they remain in the same post, and every time they are asked by KPK. The Decree also stipulates that heads of each unit shall remind their staff to submit their wealth report without delay. In the event that they fail to do so within the specified time, they risk being sanctioned under articles 3 and 4 of Government Regulation Number 53 Year 2010. The example set by the Ministry of Finance was followed by other agencies as well, like the Indonesian National Police, the National Land Management Agency (BPN), the Constitutional Court, and the Upstream Oil and Gas Executive Agency (BP Migas).

In the government business sector, a number of state-owned enterprises also joined the effort. In the banking sector, there are Bank Mandiri, Bank Rakyat Indonesia, Bank Jabar-Banten, Bank DKI, and Bank Tabungan Negara. Previously, the state owned oil and gas company, PT Pertamina, Bank Negara Indonesia, and the national flag carrier, PT Garuda Indonesia, have also expanded their mandatory reporting.

In the effort to promoting a good human resources development for public officials, Indonesia carry out bureaucratic reform program for government officials. This program include the reform in recruitment, hiring, promotion, performance, and renumeration for government officials. The objective of the program are to create a clean, transparent and accountable government officials.

There are five basic strategies of KPK to improve public services:

1. to continue to encourage the existing supervisory apparatus to enhance their role;
2. to identify best practices among various agencies and use them as the benchmark to encourage others to raise the bar;
3. to involve other relevant agencies, such as the Ministry for Utilisation of State Apparatus and Bureaucratic Reform, the Ombudsman, Supreme Audit Board, Financial and Development Supervisory Agency, Government Procurement Policy Agency, Inspectorates, and the Information Commission to push for more improvements;
4. to optimise the use of information technology to preempt the possibility for corruption.
5. to continues to engage the mass media, the civil society and academia, professional organisations and trade unions, and encourage them to take an active part, provide ideas and recommendations and play their role as social controllers of efforts to improve public services.

From open evaluations to unannounced inspections in the field, KPK has carried out no less than 30 activities in 10 provinces within the last year. The results have so far been promising. Officials in public service units far and wide have stepped up their commitment and made inroads to improve services. Transparency in public service is improving, by published fees, requirements, and procedures. All these measures are discouraging public service providers from exploiting the system, extorting and complicating the public.

KPK also started The Public Sector Anti-corruption Initiative Assessment (PIAK) to employs quantitative and qualitative indicators to assess anti corruption initiatives. PIAK measures whether a government institution has applied an effective system and mechanism to prevent and reduce corruption within the institution. To complement the public sector Anti-corruption Initiative Assessment (PIAK) implemented since 2009, in 2011 KPK launched its business sector equivalent, the Anti-corruption Initiative Study (SIAK) which is intended to measure and review anti-corruption initiatives and efforts conducted in state-owned companies. SIAK itself is a self-assessment conducted by participants by filling in quantitative questionnaires with supporting evidence. Conflict of interest, whistle-blower system and code of conducts are part of the indicators assessed in this survey. In addition to quantitative questionnaires, participants are also asked to prepare a qualitative report elaborating the initiatives taken outside of SIAK main indicators. KPK would then verify the supporting evidence against and conduct field verifications, assess both the quantitative questionnaire and the qualitative report, then make recommendations for improving the participants' anti corruption efforts.

To increase compliance rate of the gratuity reports, KPK has initiated "Gratuity Controlling Program". KPK received more than 1,300 reports in 2011. A threefold increase

compare to last year performance. Furthermore, six government agencies and companies has signed agreements with KPK to start implementing the system as part of their participation to combat corruption and to comply with the internal code of conducts.

On the other hand, measures to private sectors are: public-private partnership to encourage business free from bribery; public awareness through various media as means to increase public understanding on national anti-corruption program; facilitate the public complaint through anonymous complaint handling system; and the use of case management system adopted from UNODC to maximise the result of investigation.

Furthermore, the Government of Indonesia has developed an anti-corruption education system. In this connection, the Ministry of Education has decided to include anti-corruption modules in the education curriculum at all levels, starting from elementary school to university. Anti corruption education program must be introduced since childhood as a valuable tool in the formation of children attitude that can be shared with parents. Such a program must be also created for young generation as they will occupy important positions in public as well as private sectors in the future.

At the national level, over the last few years Indonesia has conducted a series of discussions at the national and provincial level to disseminate and raise the awareness of national stakeholders on the strategy and plan of action and established the Anti Corruption Forum for non-governmental organisations to discuss the effective implementation of the strategy.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate time frame)

In 2012, Indonesia would promoting code of conduct and code of ethics for public officials, improving regulation for conflict of interest, improving implementation of information disclosure mechanism, and promoting the compliance of Wealth Reporting of public services and improving social control for governance.

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

Indonesia wish could have opportunities to learn the asset declaration and gratuities report system from member economies to improve the compliance and effectivity of the asset declaration and gratuities report of the public officials

I. B. Criminalisation and Law Enforcement (Chapter III)

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RELEVANT UNCAC PROVISIONS

Article 15, Bribery of National Public Officials
Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offenses, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

Article 16, Bribery of foreign public officials and officials of public international organizations

(1) Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offense, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.
(2) Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offense, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

Article 17, Embezzlement, misappropriation or other diversion of property by a public official

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offenses, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

Article 18, Trading in influence

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offenses, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

Article 19, Abuse of functions

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offense, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

Article 20, Illicit enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

Article 21, Bribery in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

Article 22, Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.

Article 23, Laundering of proceeds of crime

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(i) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this

Convention;

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

Article 25, Obstruction of justice

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

Article 26, Liability of legal persons

Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

1. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.
2. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.
3. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Article 29 Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

Article 32 Protection of witnesses, experts and victims

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.
2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:
   (a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;
   (b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.
3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.
4. The provisions of this article shall also apply to victims insofar as they are witnesses.
5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

Article 33, Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

The offenses established in accordance with the UNCAC are found mainly in Law Number 31 Year 1999 on Eradication on Corruption Crimes as amended by Law Number 20 Year 2001 on Amendments on Law Number 31 Year 1999 on Eradication on Corruption Crimes (Anti Corruption Law), the Criminal Code and Law No. 8 Year 2010 on the Prevention and Eradication of the Money Laundering Crimes.

Indonesia has criminalized an important number of corruption and related offenses

These include active and passive bribery of domestic public officials, abuse of functions, participation in an offense and attempt, embezzlement of property in both public and private sectors, laundering the proceeds of crime, and concealment. A comprehensive range of offenses, including any offense committed abroad and punishable with a penalty of imprisonment for four years or more, is a predicate offense to money laundering.

Bribery of foreign public officials and officials of public international organizations, trading in influence, illicit enrichment, and bribery in the private not yet been established as offenses Nevertheless, the criminalization of foreign bribery has been given in the draft on the amendments of Anti Corruption Law.

The related provisions on the liability of legal person stated in the Article 20 of Anti Corruption Law paragraph (1) and (2):

> (1) In the event that corruption is committed by on behalf of a corporation, prosecution and sentencing may be conducted against the corporation and/or its managers.
> (2) Criminal Acts of corruption committed by a corporation are action by persons either in the context of a working relationship or other relationships, undertaken within the environment of the aforementioned corporation, either singularly or jointly.

Until now, Indonesia does not have experience in prosecuting legal person for doing corruption, but Indonesia has commitment to broad the application by put provisions for liability for legal person with more detail in the draft of amendment of Anti Corruption Law and also in the enhancing the capacity building of the law enforcement to prosecute legal person for corruption.

Article 31 of the UNCAC requires each state party to implement measures to enable "the identification, tracing, freezing or seizure" of proceeds of crime and property used in crime. Pursuant to the Convention, Corruption Eradication Corruption has undertaken eminent efforts to recover and repatriate state assets loss derived from corruption. The total amount of funds that KPK successfully sent to regional budget in 2011 is Rp 65 billion or around USD 7.2 million.

Witnesses, experts and victims are protected under Law No. 13 Year 2006 on the Protection of Witnesses and Victims. The LSPK (Witness Protection Agency) is dedicated to their protection. Under the Criminal Procedure Code, a person who experiences loss as a result of an offense has a right to institute a claim for compensation where criminal procedures are ongoing.
The statute of limitations prescription starts running from the time of the commission of an offense. For corruption and related offenses, the prescription is 12 years (for crimes punishable with more than three years of imprisonment) and 18 years (for crimes punishable with life imprisonment). The statute of limitations it self cannot be suspended.

To increase the whistle blower protection, KPK develop a web based whistle-blower system which is enable anyone to report a corruption crime anytime anywhere without need to disclose their identity. By using the system, whistle-blower could have communication with the authorized officials. In using the system whistle-blower secured by username and password.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate time frame)

In 2012, Indonesia would improve protection for whistle blower protection and justice collaborator, improving capacity building for law enforcement and judicial institutions, and improving recovery and repratiation of assets.

In 2013, Indonesia would have amendment of Anti-Corruption Law, Mutual Legal Assistance Law, and Extradition Law which more comply with the UNCAC.

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

There is a need for technical assistance in the following areas:

1. criminalisation of bribery of foreign public officials and officials of public international organisations,
2. liability of legal persons,
3. obstruction of justice,
4. transfer of criminal proceedings,
5. joint investigations,
6. the use of special investigative techniques, and
7. mutual legal assistance.

There is also a need for capacity building for investigators and prosecutors in the "follow-the-money" approach and promote greater use of the anti-money laundering legislation.

I.C. Preventing Money-Laundering

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RELEVANT UNCAC PROVISIONS

- **Art. 14(1) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons, that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering.**

- **Art. 14(2) Implement feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders.**

- **Art. 14(3) Implement appropriate and feasible measures to require financial institutions, including money remitters, to:**
  (a) include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;
  (b) maintain such information throughout the payment chain; and
  (c) apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

On 22 February 2011, the Bill of Fund Transfer has been passed by the parliament, and subsequently, on 23 March 2011, the Bill was signed by the President of Republic of Indonesia; thus officially enacted the Bill as the Law No. 3 Year 2011 on Funds Transfers. The Funds Transfer Act serves as a strong legal basis for remittance activities and wire transfer as it regulates, among others:

- Funds Transfer operators, including money remitters, must be licensed by Bank Indonesia, and must be Indonesian Banks or Indonesian legal entities;
- Both domestic and cross-border funds transfers; provided that the funds transfer order is within Indonesian jurisdiction;
- Funds transfers order that is paper-based and electronic-based;
- Information that must be provided by originator of funds transfer to the sending operator;
- Linkage with the new Law of Prevention and Eradication of Money Laundering Crime (Law No. 8 Year 2010);
- Criminal sanction for any party conducting funds transfer activities without license from Bank Indonesia (maximum prison of 3 years or fine of Rp. 3 billion);
- Bank Indonesia has the authority to oversee funds transfer operators, and also to require operators to submit reports to Bank Indonesia.

The expected remain action of deliberation of new AML Law was fulfilled on 22 October 2010. The Parliament with the Government promulgated a new brand of AML legislation called Law No. 8 Year 2010 concerning The Prevention and Eradication of Money Laundering Crime.

In relation with Know Your Customer (KYC) regulation for commercial banks, Bank Indonesia (Indonesian Central Bank) has already improved a new regulation concerning Anti-Money Laundering (AML) and Combating The Financing of Terrorism (CFT) for Commercial Bank to adjust with international best practices, including regulation of extra diligence for PEPs and correspondent banking, regulation for the employment of intermediaries by financial institution for Customer Due Dilligence work, regulation regarding AML for foreign affiliates, and implementing provision for supporting existing wire transfer regulations.

To assist supervisors in conducting compliance supervision on the implementation of AML/CFT Program, Bank Indonesia has issued Internal Circular Letter number 12/68/INTERN concerning on Supervision Guidance on AML/CFT Program. Besides strengthening the regulation on Money Changers, through issuing 2 (two) Circular Letters and Internal Letter for the implementation of KYC principles for complementing previous regulations, BI also issued a regulation on electronic money and money remittance.

Under Non-Bank Financial Institution sector, 2 (two) regulations for KYC apply to capital market and non-bank financial institution are also being improved respectively, namely the Decision of Head of Bapepam-LK which is known as V.D.10 and Minister of Finance Regulation that is also known as PMK 30. Those regulations are enacted to adjust with international best practices.

Withh regards to Cross Border Cash Carrying measures, Directorate General of Customs and Excise (DGCE) in collaboration with PPATK conducted socialization to officers of customs and excise, administrative staff at the airport and seaport, and law

enforcement officers (Police, prosecutor), about the rules and procedures of cash carrying into / from the territory of the Republic of Indonesia.

In addition, PPATK and DGCE have made publication to public (i.e. banners, flyers, pamphlets), especially people who want to make cross-border trip, about obligation or provision and procedures to report cash carrying into / from the territory of the Republic of Indonesia. Publication will be placed in airport and seaport. For all cities socialized in 2010, the publication media has been placed completely last year. Some pamphlets are going to be distributed to certain Indonesian representative offices (embassies) to raise the awareness of the travelers.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate time frame)

In 2012, Indonesia would reviewing the remain KYC-related provision to keep in line with the new AML Law as such insurance, capital market, pension fund and finance company for non-bank sector and complete the Government Regulation concerning Reporting of Cross Border Cash Carrying (CBCC) and Bearer Negotiable Instruments (BNI) as required by the new AML Law for procedures of reporting CBCC and BNI, impose administrative sanction, and deposit to the state's cash.

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

Capacity building for FIU, law enforcement and judicial agencies in anti money laundering issue, including Cross Border Cash Movement and Bearer Negotiable Instruments, assets tracing, freezing, restraining, confiscating, and repatriating of assets.

II. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO APEC INTEGRITY STANDARDS (CROSS CHECK WITH I.A. ABOVE)

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LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Strengthen Measures to Effectively Prevent and Fight Corruption and Ensure Transparency by Recommending and Assisting Member Economies to:

- ***Establish objective and transparent criteria that assure openness for merit, equity, efficiency for the recruitment of civil servants, and promote the highest levels of competence and integrity;***
- ***Adopt all necessary measures to enhance the transparency of public administration, particularly with regard to organization, functioning and decision-making processes;***
- ***Develop and implement appropriate public financial disclosure mechanisms or codes of conduct for senior-level public officials [SOM III: Guidelines];***

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

See above in Adopting Preventive Measures in Implementation of Anti-Corruption Commitments Relating to UNCAC Provisions

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate time frame)

See above in Adopting Preventive Measures in Implementation of Anti-Corruption Commitments Relating to UNCAC Provisions

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

See above in Adopting Preventive Measures in Implementation of Anti-Corruption Commitments Relating to UNCAC Provisions

III. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO SAFE HAVENS (CROSS CHECK WITH I.C. ABOVE):

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LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Deny safe haven to officials and individuals guilty of public corruption, those who corrupt them, and their assets:

- ***Promote cooperation among financial intelligence units of APEC members including, where appropriate, through existing institutional mechanisms.***
- ***Encourage each economy to promulgate rules to deny entry and safe haven, when appropriate, to Officials and individuals guilty of public corruption, those who corrupt them, and their assets.***
- ***Implement, as appropriate, the revised Financial Action Task Force (FATF) 40 Recommendations and FATF's Special Recommendations (Santiago Course of Action)***
- ***Work cooperatively to investigate and prosecute corruption offenses and to trace freeze, and recover the proceeds of corruption (Santiago Course of Action)***
- ***Implement relevant provisions of UNCAC. These include:***
  - ***Art. 14 (Money laundering)***
  - ***Art. 23 (Laundering of Proceeds of Crime)***
  - ***Art. 31 (Freezing, seizure and confiscation)***
  - ***Art. 40 (Bank Secrecy)***
  - ***Chapter V (Asset Recovery)***

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Some legal products on Anti Money Laundering (AML) and Countering Financing of Terrorism (CFT) have been improved to be in line with 40+9 FATF Recommendations, such as Bank Indonesia Regulation for banking sector and Chairman of Bapepam-LK Decision as well as Minister of Finance Regulation for Non-Bank Financial Institutions sector. A number of socialisations and inspections are under way to ascertain the implementation of those regulations. The implementation of new regulations has already had an impact on improving the customer identification and beneficial owner by financial institutions and increasing quantity and quality of Suspicious Transaction Reports during last year.

In order to accommodate the revised 40 FATF Recommendation and 9 Special Recommendations, including covering deficiencies in recent ICRG Targeted Review as well, Indonesia is making absolute replacement to the previous law of anti-money laundering. The draft amended Law has been approved by the House of Representative and signed by the President on 22 October 2010. Finally, the new AML law is enacted then. This notable law entitled as Law on the Prevention and Eradication of the Crime of Money Laundering (Law No. 8 Year 2010). This new AML law contents stipulated legal breakthrough provision among others in detail:

1. Extension scope of coverage of predicate offences combine 25 (twenty five) list of crimes, including narcotics and psychotropic substances and any other crimes imposed with imprisonment for the term of 4 (four) years or more (Article 2);
2. Extension scope of coverage of assets and proceeds, which include Assets known or reasonably suspected to be used and/or being used, directly or indirectly, for acts of terrorism, organised terrorism or individual terrorism (Article 1 Number 13);
3. Improvement of provisions on the crime of money laundering which clear criminalisation act or the elements of crime of money laundering (Article 3, Article 4 and Article 5);
4. Increasing maximum custodial sentence of money laundering offence to 20 (twenty) years and fine maximum Rp10.000.000.000,- (ten billion rupiah) or equivalent with US$ 1.000.000,- (one million USD), which is comparable with other serious economic crimes (Article 3);
5. Strengthening the regulation of implementation of the KYC Principle by the Reporting Parties. As stated in Elucidation of the Article 18 of Law, Included in the implementation of Know Your Customer Principles are Customer Due Diligence (CDD) and Enhanced Due Diligence (EDD) as referred to in the Recommendation 5 of the Financial Action Task Force (FATF) on Money Laundering;
6. Extension Scopes of Reporting Parties which include Financial Service Provid-

ers (FSPs) and Designated Non-Financial Businesses. Extension of the types of report from FSPs, in the form of International Fund Transfer Instruction (IFTI) Report;
7. Giving authority to Financial Services Providers for transaction postponement for 5 (five) days. A postponement of a Transaction shall be performed where the Services User:
   a. is carrying out a Transaction which is reasonably suspected of using Assets originating from proceeds of criminal acts as referred to in Article 2 paragraph (1);
   b. owns an account used to receive Assets originating from proceeds of criminal acts as referred to in Article 2 paragraph (1); or
   c. c. known or reasonably suspected is using falsified documents.
8. Giving authority to the Directorate General of Customs and Excise to control Cross Border Cash Carrying and Bearer Negotiable Instruments as well as impose administrative sanction against the violation of Cross Border Cash Carrying and Bearer Negotiable Instruments either incoming or Outgoing of the Indonesian Customs Territory;
9. In the framework of performing its function to analyse and examine reports and information, in Article 44 of the New AML Law, giving extension of PPATK authorities which is include the authority to provide recommendations to law enforcement agencies on the importance of performing an interception or wire-tapping on electronic information and/or electronic documents in accordance with prevailing laws and regulations. As well as the authority to request financial services providers to suspend the entire or part of transactions temporarily that are known or suspected to be the proceeds of a crime.
10. The investigation of money laundering shall be conducted by the Investigator of the predicate crimes, namely: the Indonesian National Police, the General Prosecutor Office, the Corruption Eradication Commission (KPK), the National Narcotics Board (BNN), and the Directorate General of Taxation as well as the Directorate General of Customs and Excise under Ministry of Finance of the Republic of Indonesia;
11. The investigator, public prosecutor, or judge has the authority to order the Reporting Party to postpone a Transaction of Assets known or reasonably suspected to constitute proceeds of criminal acts. To handle the money laundering case effectively, in order to enable investigation, prosecution and trial in a court of law, regarding the money laundering crime, it is not mandatory to prove the predicate crime beforehand. During the court trial, the Judges will order the defendant to prove that the Assets related with the case do not originate from or are not linked to criminal acts as referred to in Article 2 paragraph (1) [a.k.a reverse burden of proof].
12. The investigators will combine the criminal investigation between crimes of money laundering and its predicate crime, and shall notify the PPATK, when they find indications of the occurrence of money laundering crime and the predicate crime (Article 75).

A number of MLA and Extradition have been also increasing indicate the effectiveness of strengthening international cooperation as stated on the list of statistic part. In addition, PPATK continues to extend the international cooperation by the signing MOU with 3 (three) FIUs during July 2010 until May 2011, namely Vietnam, India, and Netherlands. At present, there are 39 MOUs have been concluded since 2003. Currently, PPATK is waiting for sounding to have MOU with Saudi Arabia and Luxembourg FIU in near future.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate time frame)

Since the new AML Law is enacted in October 2010, many of initiatives and activities will be determined in 2012, as such preparation on amount of new provisions to be in line with the new Law No. 8 Year 2010, conduct comparative study for performing preliminary investigation to the similar FIU function in order to have investigation procedure function as mandated in the AML Law, enhanced coordination for cooperation of AML/CFT regime, and conduct some seminars/workshops in related with current issue of AML/CFT as well as to perform a number of capacity building to FIU staffs, Investigator, Prosecutor, Judges, and relevant institutions.

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

To increase the effectiveness of implementing the new AML Law, Indonesia would needs capacity building for regulators, FIU and law enforcement agencies includes Investigator, Prosecutor, Judges and other relevant institutions regarding AML issue, especially in freezing, restraining, confiscating and repatrating asset from overseas jurisdiction.

IV. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO PRIVATE SECTOR CORRUPTION:

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LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Fight both Public and Private Sector Corruption:

- ***Develop effective actions to fight all forms of bribery, taking into account the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or other relevant anti-corruption conventions or initiatives.***

- ***Adopt and encourage measures to prevent corruption by improving accounting, inspecting, and auditing standards in both the public and private sectors in accordance with provisions of the UNCAC.***

- ***Support the recommendations of the APEC Business Advisory Council (ABAC) to operate their business affairs with the highest level of integrity and to implement effective anti corruption measures in their businesses, wherever they operate.***

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

The draft of the amendment of the Law for Corruption Crime had been adopted the Foreign Public Officials as the subject of the law. The draft of the amendment law regulating both, the active and passive bribery of the foreign public officials. With the amendment law, law enforcement could prosecuting the payer and also the receiver of bribery payments for the foreign public officials. In the draft also regulating about extortion and embezzlement of foreign public officials.

Although Indonesia not yet have Foreign Bribery provisions, but KPK had investigated 4 bribery cases which are involving foreigner as the bribe payer. KPK accused the government official which receive the payment for bribery. In the investigation, KPK cooperate with the related country law enforcement to exchange information and evidence through informal cooperation and MLA.

In the draft of the amendment law, the provisions of corporate liabilities set out in details about the the penalties for corporation. The penalties for the corporation would not only fines, but also put the revocations of rights, assets confiscations, disbursement of the state lost (if there is any), refunds of profits or the recovery of damages caused by corruption as the penalties.

On the other hand, measures to private sectors are: public-private partnership to encourage business free from bribery; public awareness through various media as a mean to increase public understanding on national anti-corruption program; and facilitate the public complaint through anonymous complaint handling system.

At the national level, over the last few years Indonesia has conducted a series of discussions at the national and provincial level to disseminate and raise the awareness of national stakeholders on the strategy and plan of action and established the Anti Corruption Forum for non-governmental organisations to discuss the effective implementation of the strategy.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate time frame)

In 2012, Indonesia would raise the awareness of private sector on anti corruption issue, promoting private partnership to encourage bussiness free from bribery. And in 2013, By the Amendment of Anti Corruption Law, Indonesia would have provisions in criminalise foreign bribery.

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

To improve understanding and capacity of law enforcement to proceed foreign bribery and legal person liability, Indonesia would like to have opportunities to study about foreign bribery crime and legal person liability.

V. ENHANCING REGIONAL COOPERATION

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LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Strengthen Cooperation Among APEC Member Economies to Combat Corruption and Ensure Transparency in the Region:

- **Promote regional cooperation on extradition, mutual legal assistance and the recovery and return of proceeds of corruption.**
- **Afford one another the widest measure of mutual legal assistance, in investigations, prosecutions and judicial proceedings related to corruption and other offenses covered by the UNCAC.**
- **Designate appropriate authorities in each economy, with comparable powers on fighting corruption, to include cooperation among judicial and law enforcement agencies and seek to establish a functioning regional network of such authorities.**
- **Sign bilateral and multilateral agreements that will provide for assistance and cooperation in areas covered by the UNCAC. (Santiago Course of Action) These include:**
  - **o Art. 44 – Extradition**
  - **o Art. 46 – Mutual Legal Assistance**
  - **o Art. 48 – Law Enforcement Cooperation**
  - **o Art. 54 -- Mechanisms for recovery of property through international cooperation in confiscation**
  - **o Art. 55 – International Cooperation for Purposes of Confiscation**
- **Work together and intensify actions to fight corruption and ensure transparency in APEC, especially by means of cooperation and the exchange of information, to promote implementation strategies for existing anti corruption and transparency commitments adopted by our governments, and to coordinate work across all relevant groups within APEC (e.g., SOM, ABAC, CTI, IPEG, LSIF, and SMEWG).**
- **Coordinate, where appropriate, with other anti corruption and transparency initiatives including the UNCAC, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, FATF, the ADB/OECD Anti-corruption Action Plan for the Asia Pacific region, and Inter-American Convention Against Corruption.**
- **Recommend closer APEC cooperation, where appropriate, with the OECD including a joint APEC-OECD seminar on anti corruption, and similarly to explore joint partnerships, seminars, and workshops with the UN, ADB, OAS, the World Bank, ASEAN, and The World Bank, and other appropriate multilateral intergovernmental organizations.**

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Indonesia law enforcement agencies are required to have cooperation with foreign agencies with regards to information exchanging, mutual legal assistance and extradition.

The conditions and procedures regulating extradition to and from Indonesia are found in Law No. 1/1979 on Extradition. Dual criminality is a requirement for extradition. The conditions and procedures regulating mutual legal assistance are found in Law No. 1/2006 on Mutual Legal Assistance in Criminal Matters.

Extradition from Indonesia is granted based on the existence of a treaty. In the absence of such a treaty, extradition may be granted in the conditions of a "good relationship". Indonesia also can grant extradition on the basis of the convention if the requesting State is party to the Convention.
Indonesia has 7 bilateral extradition treaties with neighbouring countries.

Extradition shall not be conducted in cases of political offences. Exceptionally, the offender may be extradited in certain types of political offences only if there is an agreement between Indonesia and the concerned country. Nationals of Indonesia are in principle not extraditable. Exceptionally, extradition may be conducted if the person concerned would be better adjudicated where the offence was committed.

Mutual Legal Assistance is afforded based on the existence of a treaty. Without such a treaty, mutual legal assistance may be provided based on good relationship under the reciprocity principles. With another ASEAN members, Indonesia had signed the ASEAN Treaty on Mutual Legal Assistance to promote cooperation in law enforcement particularly in mutual legal assistance in south east asia.

Extradition and Mutual Legal Assistance request should be addressed to Indonesia Central Authority, the Ministry of Law and Human Rights of Republic of Indonesia, Jl. HR Rasuna Said Kav 6-7, Jakarta 12940, Indonesia. Indonesia National Police, Attorney General Office and KPK are the competent authorities for Mutual Legal Assistance request.

KPK has established a formal partnership with 20 institutions from 15 countries. Some joint investigations in corruption cases have been established between KPK and other foreign agencies. Indonesia National Police is member of ACB-Interpol, and also have several arrangements with foreign law enforcement agencies.

There are 105 of MLA Requests to Indonesia since 2006 until 2011, 41 requests have been executed and the relevant evidences have been conveyed to the Requesting Countries. 40 requests need the Requesting Countries to submit additional information to fulfill the requirements under law and procedure code in Indonesia. Furthermore, 20 requests are under investigation process, and 5 requests have been withdrawal by relevant countries. On the contrary, there are 36 of MLA Requests from Indonesia since 2006 until 2011, 5 requests have been granted and executed. Any relevant evidences and asset recovery have been conveyed to the Republic of Indonesia. 19 requests are under consultation and communication. Nevertheless, 12 requests have not been responded yet.

Based on experience, cooperation in investigations and prosecutions would be more effective if conducted not only through formal methods as mutual legal assistance but also through informal methods. The success story in locating KPK's fugitives, Muhammad Nazaruddin and Nunun Nurbaetie established because of the fast information exchange as the result of cooperation with foreign agencies.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate time frame)

Indonesia would like to improve the MLA and Extradition Regime and promote a clear and informative procedures for Mutual Legal Assistance (MLA) Request to Indonesia by drafting amendments for MLA and Extradition Law and establishment of the guidance on procedures of MLA.

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

To improve the MLA and Extradition Regime do would work effectively, Indonesia would like to take opportunities to learn the MLA and Extradition Regime.

VI. OTHER APEC ACT LEADERS' AND MINISTERS' COMMITMENTS

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LEADERS' AND MINISTERS' COMMITMENTS

- **2005**: Ministers encouraged all APEC member economies **to take all appropriate steps towards effective ratification and implementation, where appropriate, of the United Nations Convention against Corruption (UNCAC)**. Ministers encouraged relevant APEC member economies to make the UNCAC a major priority. They urged all member economies to submit brief annual progress reports to the ACT Task Force on their APEC anti-corruption commitments, including a more concrete roadmap for accelerating the implementation and tracking progress. (See Section I Above, UNCAC)
- **2006**: Ministers underscored their commitment **to prosecute acts of corruption, especially high-level corruption by holders of public office and those who corrupt them.** In this regard, Ministers commended the results of the Workshop on Denial of Safe Haven: Asset Recovery and Extradition held in Shanghai in April 2006. Ministers agreed to consider developing domestic actions, in accordance with member economy's legislation, to deny safe haven to corrupt individuals and those who corrupt them and prevent them from gaining access to the fruits of their corrupt activities in the financial systems, including by implementing effective controls to deny access by corrupt officials to the international financial systems.
- **2007**: We endorsed a model **Code of Conduct for Business, a model Code of Conduct Principles for Public Officials and complementary Anti-Corruption Principles for the Private and Public Sectors**. We encouraged all economies **to implement these codes** and welcomed agreement by Australia, Chile and Viet Nam to pilot the Code of Conduct for Business in their small and medium enterprise (SME) sectors. (AELM, AMM)
- **2008**: We commended efforts undertaken by member economies to develop comprehensive anti-corruption strategies including efforts to restore public trust, ensure government and market integrity. We are also committed **to dismantle transnational illicit networks and protect our economies against abuse of our financial system by corrupt individuals and organized criminal groups through financial intelligence and law enforcement cooperation related to corrupt payments and illicit financial flows.** We agreed to further strengthen international cooperation to combat

corruption and money laundering in accordance with the Financial Action Task Force standards. International legal cooperation is essential in the prevention, investigation, prosecution and punishment of serious corruption and financial crimes as well as the recovery and return of proceeds of corruption. (AELM, AMM).

- **2009**: We welcome the Anti-Corruption and Transparency Experts' Task Force's Singapore **Declaration on Combating Corruption, Strengthening Governance and Enhancing Institutional Integrity, as well as the APEC Guidelines on Enhancing Governance and Anti-Corruption**. We encourage economies to implement measures to give practical effect to the Declaration and Guidelines. (AMM)
- **2010**: We agreed to leverage collective action **to combat corruption and illicit** trade by promoting clean government, fostering market integrity, and strengthening relevant judicial and law enforcement systems. We agreed to deepen our cooperation, especially in regard to discussions on achieving more durable and balanced global growth, increasing capacity building activities in key areas such as combating corruption and bribery, denying safe haven to corrupt officials, strengthening asset recovery efforts, and enhancing transparency in both public and private sectors. We encourage member economies, where applicable, to **ratify the UN Convention against Corruption and UN Convention against Transnational Organized Crime and to take measures to implement their provisions, in accordance with economies legal frameworks to dismantle corrupt and illicit networks across the Asia Pacific region.** (AELM, AMM)

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Indonesia will set out a National Strategies on Corruption Prevention and Eradication as the national platform of fighting against corruption. The elemet of the National Strategies on Corruption Prevention and Eradication are:

1. Law Enforcement Strategy
2. Prevention Strategy
3. Laws Strategy
4. Anti Corruption Education and Campaign Strategy
5. International Cooperation and Asset Recovery Strategy
6. Efforts Fighting Against Corruption Report Mechanism Strategy

The National Strategies could be objectively evaluated. Indonesia put 3 parameters to score the successfullness of the National Strategies by scoring the target of compliance of domestic Law to UNCAC, the score of Corruption Perception Index and the National Integrity System Index.

Since 2004, KPK had prosecuted 49 Members of Parliaments and Members of District Parliament, 6 Ministerial Level, 4 Ambassadors, 7 State Commissioners, 8 Governors, 28 Mayors, 3 Judges, and numbers of high level officials. 40% cases are corruption in procurement, 38% cases are bribery, 15% cases are abuse of power, and 8 % cases are in licensing and illegal charges.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate time frame)

Indonesia would commit to prosecute acts of corruption, taken steps towards effective implementation, where appropriate, of the United Nations Convention against Corruption (UNCAC).

ECONOMY: Japan
CALENDAR YEAR: 2012
LAST UPDATED: May 18, 2012

LEADERS' AND MINISTERS' COMMITMENTS

- **2010**: We agreed to enhance our efforts to improve transparency and eliminate corruption, including through regular reporting via ACT and other relevant fora on economies' progress in meeting APEC Leaders' commitments on anti-corruption and transparency.
- **2006**: Ministers endorsed APEC 2006 key deliverables on Prosecuting Corruption, Strengthening Governance and Promoting Market Integrity and encouraged member economies to take actions to realize their commitments. Ministers also encouraged all economies to complete their progress reports on the implementation of ACT commitments by 2007. Ministers welcomed APEC efforts to conduct a stocktaking exercise of bilateral and regional arrangements on anti-corruption in cooperation with relevant international and regional organizations, and encouraged member economies to fully participate in the stocktaking activities.

Objective: Where appropriate, to self-assess progress against APEC Leaders' and Ministers' commitments on anti-corruption, transparency, and integrity and to identify capacity building needs to assist the ACT to identify priority areas for future cooperation.

EXECUTIVE SUMMARY

1. Summary of main achievements/progress in implementing the commitments of APEC Leaders and Ministers on anti-corruption, transparency, and integrity since 2004.

- Japan has been implementing laws and regulations that aim to improve transparency and eliminate corruption, including through National Public Service Act (NPSA) and National Public Service Ethics Act (NPSEA). In addition, Japan criminalizes acts of bribery in Penal Code. Japan commits to effectively implement these laws and regulations aimed at the prevention of corruption and increasing transparency. Furthermore, Japan encouraged business communities to increase compliance and prepare a manual for preventing corruption.

2. Summary of forward work program to implement Leaders' and Ministers' commitments.

3. Summary of capacity building needs and opportunities that would accelerate/strengthen the implementation of APEC Leaders' and Ministers' commitments by your economy and in the region.

I. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO UNCAC PROVISIONS

LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Take All Appropriate Steps Towards Ratification of, or Accession to, and Implementation of the UNCAC:

- Intensify our efforts to combat corruption and other unethical practices, strengthen a culture of transparency, ensure more efficient public management, and complete all appropriate steps to ratify or accede to, and implement the UNCAC.
- Develop training and capacity building efforts to help on the effective implementation of the UNCAC's provisions for fighting corruption.

Work to strengthen international cooperation in preventing and combating corruption as called for in the UNCAC including extradition, mutual legal assistance, the recovery and return of proceeds of corruption.

I.A. Adopting Preventive Measures (Chapter II, Articles 5-13)

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RELEVANT UNCAC PROVISIONS

Chapter II, Articles 5-13 including:

- Art. 5(2) Establish and promote effective practices aimed at the prevention of corruption.
- Art. 7(1) Adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials that:

- Are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;
- Include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;
- Promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;
- Promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions.

- Art. 7(4) Adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.
- Art. 8(2) Endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.
- Art. 8(5) Establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials. Art. 52(5)/(6) [sharing the information on the financial disclosures that should be in place]
- Art. 10(b) Simplify administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities.
- Art. 12(2)(b) Promote the development of standards and procedures designed to safeguard the integrity of private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State.
- Art. 12(2)(c) Promote transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities.
- Art. 13(1) Promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

The following are examples of measures taken by Japan;

With regards to the article 7 of the UNCAC,
National Public Service Act (NPSA) Article 1 states the purpose of the Act and provides that officials shall be selected and guided, through democratic means, as to achieve maximum efficiency in the performance of public duties, thereby ensuring the democratic and efficient performance of those duties for the citizens of Japan.

NPSA Article 27 provides that in the application of the Act, all citizens shall be accorded equal treatment and shall not be discriminated against by reason of race, religious faith, sex, social status, family origin, political opinions or affiliation except those who, on or after the date of the enforcement of the Constitution of Japan, formed or belonged to a political party or organization which advocated the subversion by force of the Constitution of Japan or the government established thereunder.

NPSA Article 33 provides that the appointment of any official shall be entirely based on their demonstrated abilities, and matters necessary for enforcing this basic standard shall be prescribed by the laws and the rules of the National Personnel Authority (NPA).

The appointment of officials shall be entirely based on abilities demonstrated through open and equal recruitment examinations.

The remuneration of national public officials in Japan is maintained at an appropriate level by comparing and setting it in line with the remuneration level of employees in the private sector through the National Personnel Authority Remuneration Recommendation.

The NPA carries out training courses for each level of positions (from officer-level positions to senior-management-level positions), the basic objective of which is to improve the capabilities held by each employee and which are required for their work such as a sense of mission and the mindset that they are servants of all citizens. The NPA also carries out Instructor Training to improve training programs on ethics for public employees and foster a sense of ethics in the Cabinet Office and each Ministry.

In FY 2010, a total number of 306,693 National Public Employees in the Regular Service attended some kind of ethics training organized by the National Public Service

Ethics Board (NPSEB), the Cabinet Office, or each Ministry. In order to promote well-planned training to maintain ethics, NPSEB carries out leadership training on ethics, and supports initiatives by the Cabinet Office or each Ministry to carry out effective training to maintain ethics by developing training materials such as presentations, case study DVDs, and e-learning materials for executive officers.

With regards to the article 7 (4), especially to address conflict of interests;
NPSA Article 103 prevents any national public officials from operating a profit-making enterprise or holding a position at such enterprise.

NPSA Article 104 restricts the participation of any national public officials in other undertaking or business.

With regards to the article 8 (2);
NPSA and National Public Service Officials Ethics Code provide codes of conduct for the correct, honourable and proper performance of public functions.

The National Personnel Authority (NPA) makes pamphlets (105,000 copies in total during 2010 and 2012) to ensure that discipline is thoroughly maintained, and distributes these pamphlets to each ministry.

With regards to the article 8 (5),
National Public Service Ethics Act Article 6 to 8 provide the rules for relevant public officials to make declarations to appropriate authorities regarding Gifts, Share Dealings and Income etc.

Regarding corporate behaviour, Ministry of Economy, Trade and Industry has annually encouraged companies to improve internal controls and to clarify basic policies for prevention of bribery of foreign public officials in orientation sessions regarding the offence for legal staff and other practical persons of companies. The orientation sessions have been held in about 20 cities and involved the participation of 2,500 people.

For further implementation of the aforementioned measures;

The Cabinet Office and all Ministries shall have an ethics supervisory officer. The ethics supervisory officer provides necessary guidance and advice to officials who belong to the Cabinet Office or to each Ministry, in order to maintain ethics pertaining to their duties, and arranges a system for the maintenance of ethics pertaining to the duties of officials of the Cabinet Office or each Ministry, in accordance with the instructions of the NPSEB.

Every first week of December since 2002 NPSEB has organized a "National Public Service Ethic Week", and made efforts for activities to raise the ethical level of National Public Employees. The Ethics Supervisory Officer of the Cabinet Office or each Ministry holds lectures and sends e-mails to all employees on the topic during this week.

I. B. Criminalization and Law Enforcement (Chapter III)

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RELEVANT UNCAC PROVISIONS

- Art. 15 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
  - The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
  - The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.
- Art. 16 (1) Adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally,
the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage,
for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.
- Art. 17 Adopt measures to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.
- Art. 20 Adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment,

that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

- Art. 21 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:
  - The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;
  - The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.
- Art. 27(1) Adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

With regards to the Art. 15,

Japan's general active and passive domestic bribery offences are found in the Penal Code (PC). Articles 197 to 197-5 deal with various forms of passive domestic bribery. Article 198 deals with active domestic bribery.

With regards to Art. 16,
The Unfair Competition Prevention Act (UCPA) criminalizes the active bribery of foreign public official.

In September 2009, the recommendation by the Japan-Vietnam Joint Committee for Anti-ODA-related Corruption Measures was released, in response to the bribery case of an ODA loan project in Vietnam. The recommendation was included in a report by a committee composed of experts under the Minister of Foreign Affairs of Japan, to study measures for preventing similar corruption cases. The summary of results of the follow-up of the recommendation is as follows:

1. Measures taken by the Ministry of Foreign Affairs of Japan and JICA

- Enhancement of punishments

Punitive measures against consultants and contractors were enhanced for repeating fraudulent actions. Also, punitive measures were enhanced for giving a bribe to foreign public servants. Moreover, Guidelines for Complaint Procedures were introduced to enhance fairness of the measures.

- Dissemination of information on strengthening efforts by the government to prevent corruption
- The framework for preventing corruption was enhanced. At meetings with associations of consultants, contractors, NGOs, Japanese chambers of commerce and industry resident abroad, and at intergovernmental meetings, information on the creation of contact points for reporting corruption-related information and other efforts by the government to prevent corruption were disseminated. Moreover, a reporting form for the corruption-related information was set.
- Protection of informers of corruption cases
- In the above-mentioned meetings, information on the measures of protecting informers of corruption cases was disseminated. The Government of Japan has strived to ensure the protection of informers in Exchange of Notes with recipient countries.
- Enhancement of dispatching experts
- JICA has dispatched experts to ensure JICA's active involvement in the process of procurements and contracts in recipient countries and to enhance the monitoring of projects.
- Organization of meetings with the business world about ODA projects at diplomatic missions
- Over sixty diplomatic missions have organized meetings with the business world, such as Japanese chambers of commerce and industry. The support system for Japanese business communities was strengthened.

2. Measures taken by business communities

- Measures to reinforce compliance
- At meetings with associations of consultants, contractors and Japanese chambers of commerce and industry resident abroad, the Government of Japan has encouraged business communities to increase compliance and prepare a manual for preventing corruption.
- Organization of seminars on loan agreements
- Seminars on loan agreements were organized in cooperation with business communities.

3. Measures taken by recipient countries

- Measures to strengthen the governance of the recipient country
- The Government of Japan has requested recipient countries to cooperate to prevent corruption. The Government of Japan also has extended support to develop legal systems concerning public procurement and preventing corruption in the recipient countries with a view to strengthening their governance.

- Measures for capacity building in recipient countries
- "Seminars on loan agreement" were organized with a view to building capacity in recipient countries.

4. Efforts through international frameworks
- Discussion in international meetings
- The Government of Japan proposed anti-corruption as an agenda item for the Anti-corruption Task Team of the Development Assistance Committee, and the Team discussed it.

I.C. Preventing Money-Laundering

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RELEVANT UNCAC PROVISIONS

- Art. 14(1) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons, that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering.
- Art. 14(2) Implement feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders.
- Art. 14(3) Implement appropriate and feasible measures to require financial institutions, including money remitters, to:

(a) include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;
(b) maintain such information throughout the payment chain; and
(c) apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

With regards to the Art. 14
The legal framework for Customer Due Diligence (CDD) and system for reporting of suspicious transaction are set out in the Act on the Prevention of Transfer of Criminal Proceeds, implemented by a Cabinet Order and an Ordinance.

The Act on the Prevention of Transfer of Criminal Proceeds was amended in April 2011. The amended act requires stricter customer due diligence through imposing wide-ranging legal obligations, including the following, on financial institutions. More detailed provisions will be established in the subordinate decrees, and the enforcement of the revised Criminal Proceeds Act and its Enforcement Order and Enforcement Ordinance is expected to greatly drive forward related measures.
- Obligation of customer due diligence when there is a suspicion of money laundering or terrorist financing
- Obligation to verify that any natural person acting on behalf of a customer, who is a juridical person, is so authorized by said juridical person
- Obligation to verify the identity of beneficial owners
- Obligation to determine whether or not a customer is acting on behalf of another person, or an obligation to take a reasonable measure to verify the identity of such other person
- Where a customer is a legal person or arrangement, an obligation to identify the ownership/control structure, or an obligation to identify the natural person who ultimately owns/controls said customer
- Obligation to obtain information on the purpose and intended nature of the business relationship
- Obligation to conduct ongoing due diligence on the business relationship
- Obligation to perform enhanced due diligence for higher risk transactions (including transactions with existing customers)
- Obligation to construct an internal management system necessary for precisely taking such measures as verification (including the case of carrying out transactions before the completion of customer due diligence)
- When there is any suspicious transaction considering the results of the verification of identity at the time of the transaction, an obligation to report such suspicious transaction (including the case where customer due diligence has not been completed)

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

The government is in the process of formulating the subordinate decrees (the Enforcement Order and the Enforcement Ordinance) on the Act on the Prevention of Transfer of Criminal Proceeds, which are to come into effect within two years of promulgating the revised Criminal Proceeds Act, along with the revised Criminal Proceeds Act.

II. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO APEC INEGRITY STANDARDS (CROSS CHECK WITH I.A. ABOVE)

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LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Strengthen Measures to Effectively Prevent and Fight Corruption and Ensure Transparency by Recommending and Assisting Member Economies to:

- Establish objective and transparent criteria that assure openness for merit, equity, efficiency for the recruitment of civil servants, and promote the highest levels of competence and integrity;
- Adopt all necessary measures to enhance the transparency of public administration, particularly with regard to organization, functioning and decision-making processes;
- Develop and implement appropriate public financial disclosure mechanisms or codes of conduct for senior-level public officials [SOM III: Guidelines];

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS
With regards to the Santiago Commitment etc., the following are examples of measures taken by Japan

NPSA Article 1 states the purpose of the Act and provides that officials shall be selected and guided, through democratic means, as to achieve maximum efficiency in the performance of public duties, thereby ensuring the democratic and efficient performance of those duties for the citizens of Japan.

NPSA Article 27 provides that in the application of the Act, all citizens shall be accorded equal treatment and shall not be discriminated against by reason of race, religious faith, sex, social status, family origin, political opinions or affiliation except those who, on or after the date of the enforcement of the Constitution of Japan, formed or belonged to a political party or organization which advocated the subversion by force of the Constitution of Japan or the government established thereunder.

NPSA Article 33 provides that the appointment of any official shall be entirely based on their demonstrated abilities, and matters necessary for enforcing this basic standard shall be prescribed by the laws and the rules of the NPA.

The appointment of officials shall be entirely based on abilities demonstrated through open and equal recruitment examinations.

National Public Service Ethics Act Article 6 to 8 provide the rules for relevant public officials to make declarations to appropriate authorities regarding Gifts, Share Dealings and Income etc.

III. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO SAFE HAVENS (CROSS CHECK WITH I.C. ABOVE):

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LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Deny safe haven to officials and individuals guilty of public corruption, those who corrupt them, and their assets:

- Promote cooperation among financial intelligence units of APEC members including, where appropriate, through existing institutional mechanisms.
- Encourage each economy to promulgate rules to deny entry and safe haven, when appropriate, to Officials and individuals guilty of public corruption, those who corrupt them, and their assets.
- Implement, as appropriate, the revised Financial Action Task Force (FATF) 40 Recommendations and FATF's Special Recommendations (Santiago Course of Action)
- Work cooperatively to investigate and prosecute corruption offenses and to trace freeze, and recover the proceeds of corruption (Santiago Course of Action)
- Implement relevant provisions of UNCAC. These include:
    - o Art. 14 (Money laundering)
    - o Art. 23 (Laundering of Proceeds of Crime)

o Art. 31 (Freezing, seizure and confiscation)
o Art. 40 (Bank Secrecy)
o Chapter V (Asset Recovery)

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

With regards to the cooperation among financial intelligence units of APEC members;

The Japanese Financial Intelligence Unit has become a member of the Egmont Group of the Financial Intelligence Units since 2000. The Japan Financial Intelligence Centre (JAFIC) has been actively participating in the activities of the cooperation among members. Since 2007, JAFIC has established cooperation framework for exchanging information with about 40 foreign counterparts including the FIUs of APEC members.

• Implement, as appropriate, the revised Financial Action Task Force (FATF) 40 Recommendations and FATF's Special Recommendations (Santiago Course of Action)

The Third Mutual Evaluation on Anti-Money Laundering and Combating the Financing of Terrorism-Japan was adopted in June 2008. After that, Japan enacted the revised Act on Prevention of Transfer of Criminal Proceeds to strengthen the customers due diligence in the financial institutions in April 2011. Then, in March 2012, the subordinate decrees of the revised Act on Prevention of Transfer of Criminal Proceeds was proclaimed to complement the Act, and will be implemented within two years from the day of the proclamation..

. Many members of FATF need technical assistance for the further implementation of the FATF recommendations. As for the technical assistance in this field, Japan has provided a contribution to the IMF's AML/CFT Topical Trust Fund to support the world wide implementation of the FATF recommendations through the capacity building programs.

• Work cooperatively to investigate and prosecute corruption offenses and to trace freeze, and recover the proceeds of corruption (Santiago Course of Action)
• Implement relevant provisions of UNCAC. These include:

o Art. 14 (Money laundering)
o Art. 23 (Laundering of Proceeds of Crime)
o Art. 31 (Freezing, seizure and confiscation)
o Art. 40 (Bank Secrecy)

Chapter V (Asset Recovery)
With regards to the international cooperation;
Japan can provide mutual legal assistance, including asset recovery, as a matter of international comity, in accordance with its domestic laws, even without the bilateral / multilateral mutual legal assistance treaty. MLAs include provision of evidence to be used for criminal proceedings in foreign jurisdiction, and assistance in execution of final court order for confiscation / collection of equivalent value, securance for such purposes and grant of confiscated property to requesting jurisdiction (i.e. asset recovery) are also possible.

Moreover, with a view to achieving more effective MLA, Japan has been actively engaged in bilateral MLAT negotiations, and the MLATs with the APEC members such as the U.S., Korea, China, Hong Kong and Russia have already come into effect.

IV. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO PRIVATE SECTOR CORRUPTION:

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LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Fight both Public and Private Sector Corruption:
• Develop effective actions to fight all forms of bribery, taking into account the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or other relevant anticorruption conventions or initiatives.
• Adopt and encourage measures to prevent corruption by improving accounting, inspecting, and auditing standards in both the public and private sectors in accordance with provisions of the UNCAC.
• Support the recommendations of the APEC Business Advisory Council (ABAC) to operate their business affairs with the highest level of integrity and to implement effective anticorruption measures in their businesses, wherever they operate.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

With regard to the recommendation of ABAC, Japan, together with other APEC economies applauded the efforts of the ACTWG to launch an APEC partnership with the private sector to combat corruption and illicit trade, including dismantling cross-border illicit networks in 2011 APEC High Level Policy Dialogue on Open Governance and Economic Growth.

- **Develop effective actions to fight all forms of bribery, taking into account the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or other relevant anticorruption conventions or initiatives.**

Japan has taken several measures to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Japan has been evaluated about the implementation as Phase 3 by the OECD Working Group on Bribery at the December meeting 2011.
Through the Financial Instruments and Exchange Law that was enacted in June 2006, an internal control reporting system has been introduced to listed companies from FY 2008. Under this system, the assessment of managers concerned with the effectiveness of internal controls over financial reporting, as well as the auditing of the managers' assessment by certified public accountants, etc., are required in order to ensure the reliability of financial reporting. It has been two years since the introduction of the system, and FSA reviewed standards and standards enforcement of internal control. As a result, the revised standards have been applied to the assessment and auditing of internal controls from the fiscal year following April 2011.
Regarding corporate behaviour, METI has annually encouraged companies to improve internal controls and to clarify basic policies for prevention of bribery of foreign public officials in orientation sessions regarding the offence for legal staff and other practical persons of companies. The orientation sessions have been held in about 20 cities and involved the participation of 2,500 people.
Regarding the Whistleblower Protection Act (enacted in June 2004, implemented in April 2006), the Cabinet Office established the 'Guidelines for Private Business Operators Concerning the Whistleblower Protection Act' in July 2005, and since then the Guidelines have been disseminated widely. The Guidelines stress the importance of an internal whistleblowing system and encourage introduction of such a system to business operators. In effect, many business operators have introduced systems, according to a 2010 survey conducted by the Consumer Affairs Agency, 97.8% of business operators who employ more than 3000 people and 90.7% of business operators who employ more than 1000 people answered they had introduced an internal whistleblowing system.

In Japan, as generally accepted fair and proper accounting standards, Japan GAAP, IFRS and US GAAP are applied to listed companies. These standards require an accounting of all assets, liabilities, revenue and expenses; accordingly, proper application of these standards would require that all payments are properly accounted for. In addition, these standards also require extensive disclosures concerning the operations and financial condition of companies.
As a process to implement complying with accounting standards, the following is stipulated in Financial Instruments and Exchange Act (FIEA), etc,

When the authority (the regulation designates the authority to the Commissioner of Financial Services Agency. The same shall apply hereinafter) finds any deficiencies in formalities in a securities registration statement or annual securities report, or finds an insufficiency in the statements on important matters to be stated therein, it may order the person submitting them to submit an amendment or amendment report. Also, a certain amount of administrative monetary penalty shall be imposed on an issuer who submitted a securities registration statement or annual securities report that contains any false statement on important matters, or lacks a statement on important matters that should be stated.

Moreover, a certain criminal penalty can be imposed on a person who submitted a securities registration statement or annual securities report that contains any false statement on important matters. Also, as civil liability, if there was a securities registration statement or annual securities report that contains any false statement on important matters, or lacks a statement on important matters that should be stated, then the issuer, auditor and underwriting person shall be held liable for compensation of damages to persons who acquired the securities.

Compliance with accounting standards is also assured with audits by CPAs and audit firms. A person who provided a false audit certification can be subject to disciplinary action, administrative monetary penalty, and criminal liability.

In Japan, some entities under the application of FIEA such as listed companies shall prepare and preserve the books and documents (financial statements, etc) according to FIEA. These financial statements require audits by CPAs and audit firms.

In breach of these provisions, administrative monetary penalty and criminal liability shall be imposed on an issuer who did not prepare or preserve the books and documents, or submitted a securities registration statement or annual securities report that contains any false statement on important matters, or lacks a statement on important matters that should be stated.

Listed companies shall prepare and submit Internal Control Reports, which evaluate their system for preparing financial statements properly according to acts and ordinances. Where they did not prepare and submit Internal Control Reports or submitted Internal Control Reports that contain any false statement, criminal liabilities shall be imposed. Where an Internal Control Report contains any fake statement on important matters or lacks a statement on important matters that should be stated or on a material fact that is necessary for avoiding misunderstanding, the issuer, auditor and underwriting person shall be held liable for compensation of damages to persons who acquired the securities. These reports require audits by CPAs and audit firms.

V. ENHANCING REGIONAL COOPERATION

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LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Strengthen Cooperation Among APEC Member Economies to Combat Corruption and Ensure Transparency in the Region:

- Promote regional cooperation on extradition, mutual legal assistance and the recovery and return of proceeds of corruption.
- Afford one another the widest measure of mutual legal assistance, in investigations, prosecutions and judicial proceedings related to corruption and other offences covered by the UNCAC.
- Designate appropriate authorities in each economy, with comparable powers on fighting corruption, to include cooperation among judicial and law enforcement agencies and seek to establish a functioning regional network of such authorities.
- Sign bilateral and multilateral agreements that will provide for assistance and cooperation in areas covered by the UNCAC. (Santiago Course of Action) These include:
    - o Art. 44 – Extradition
    - o Art. 46 – Mutual Legal Assistance
    - o Art. 48 – Law Enforcement Cooperation
    - o Art. 54 -- Mechanisms for recovery of property through international cooperation in confiscation
    - o Art. 55 – International Cooperation for Purposes of Confiscation
- Work together and intensify actions to fight corruption and ensure transparency in APEC, especially by means of cooperation and the exchange of information, to promote implementation strategies for existing anticorruption and transparency commitments adopted by our governments, and to coordinate work across all relevant groups within APEC (e.g., SOM, ABAC, CTI, IPEG, LSIF, and SMEWG).
- Coordinate, where appropriate, with other anticorruption and transparency initiatives including the UNCAC, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, FATF, the ADB/OECD Anticorruption Action Plan for the Asia Pacific region, and Inter-American Convention Against Corruption.
- Recommend closer APEC cooperation, where appropriate, with the OECD including a joint APEC-OECD seminar on anticorruption, and similarly to explore joint partnerships, seminars, and workshops with the UN, ADB, OAS, the World Bank, ASEAN, and The World Bank, and other appropriate multilateral intergovernmental organizations.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Japan provides mutual legal assistance, including those relating to asset recovery, in accordance with its domestic laws and under the guarantee of reciprocity, regardless of whether a treaty/convention exists or not between Japan and the requesting state. Moreover, Japan has been actively engaging in bilateral MLAT negotiations. Since the APEC Leaders' Summit in Yokohama 2010, Japan has concluded MLAT/MLAA with EU and Russia, which have already entered into force. As a result, Japan is now able to provide mutual legal assistance in the areas of anti-corruption issues for more than 30 jurisdictions, including such APEC members as the U.S., Korea, China, Hong Kong and Russia, in further expedited and efficient manners.

VI. OTHER APEC ACT LEADERS' AND MINISTERS' COMMITMENTS

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LEADERS' AND MINISTERS' COMMITMENTS

- **2005**: Ministers encouraged all APEC member economies **to take all appropriate steps towards effective ratification and implementation, where appropriate, of the United Nations Convention against Corruption (UNCAC).** Ministers encouraged relevant APEC member economies to make the UNCAC a major priority. They urged all member economies to submit brief annual progress reports to the ACT Task Force on their APEC anti-corruption commitments, including a more concrete roadmap for accelerating the implementation and tracking progress. (See Section I Above, UNCAC)
- **2006**: Ministers underscored their commitment **to prosecute acts of corruption, especially high-level corruption by holders of public office and those who corrupt them.** In this regard, Ministers commended the results of the Workshop on Denial of Safe Haven: Asset Recovery and Extradition held in Shanghai in April 2006. Ministers agreed to consider developing domestic actions, in accordance with member economy's legislation, to deny safe haven to corrupt individuals and those who corrupt them and prevent them from gaining access to the fruits of their corrupt activities in the financial systems, including by implementing effective controls to deny access by corrupt officials to the international financial systems.
- **2007:** We endorsed a model **Code of Conduct for Business, a model Code of Conduct Principles for Public Officials and complementary Anti-Corruption Principles for the Private and Public Sectors.** We encouraged all economies **to implement these codes** and welcomed agreement by Australia, Chile and Viet Nam to pilot the Code of Conduct for Business in their small and medium enterprise (SME) sectors. (AELM, AMM)
- **2008:** We commended efforts undertaken by member economies to develop comprehensive anti-corruption strategies including efforts to restore public trust, ensure government and market integrity. We are also committed **to dismantle transnational illicit networks and protect our economies against abuse of our financial system by corrupt individuals and organized criminal groups through financial intelligence and law enforcement cooperation related to corrupt payments and illicit financial flows**. We agreed to further strengthen international cooperation to combat corruption and money laundering in accordance with the Financial Action Task Force standards. International legal cooperation is essential in the prevention, investigation, prosecution and punishment of serious corruption and financial crimes as well as the recovery and return of proceeds of corruption. (AELM, AMM)
- **2009**: We welcome the Anti-Corruption and Transparency Experts' Task Force's **Singapore Declaration on Combating Corruption, Strengthening Governance and Enhancing Institutional Integrity, as well as the APEC Guidelines on Enhancing Governance and Anti-Corruption.** We encourage economies to implement measures to give practical effect to the Declaration and Guidelines. (AMM)
- **2010:** We agreed to leverage collective action **to combat corruption and illicit** trade by promoting clean government, fostering market integrity, and strengthening relevant judicial and law enforcement systems. We agreed to deepen our cooperation, especially in regard to discussions on achieving more durable and balanced global growth, increasing capacity building activities in key areas such as combating corruption and bribery, denying safe haven to corrupt officials, strengthening asset recovery efforts, and enhancing transparency in both public and private sectors. We encourage member economies, where applicable, **to ratify the UN Convention against Corruption and UN Convention against Transnational Organized Crime and to take measures to implement their provisions, in accordance with economies legal frameworks to dismantle corrupt and illicit networks across the Asia Pacific region.** (AELM, AMM)

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

In 2006, the Japanese Diet approved the conclusion of the UNCAC. It is required to establish domestic laws in order to implement the UNCAC. Japan can implement most of the requirements of the UNCAC through its existing domestic laws, however, has not concluded the convention yet, pending the establishment of the domestic laws. The GOJ will continue to explore the way of establishing domestic laws to implement the UNCAC.

REPUBLIC OF KOREA

ECONOMY: Republic of Korea
CALENDAR YEAR: 2012
LAST UPDATED: May 14, 2012

LEADERS' AND MINISTERS' COMMITMENTS

- **2010**: We agreed to enhance our efforts to improve transparency and eliminate corruption, including through regular reporting via ACT and other relevant fora on economies' progress in meeting APEC Leaders' commitments on anti-corruption and transparency.
- **2006**: Ministers endorsed APEC 2006 key deliverables on Prosecuting Corruption, Strengthening Governance and Promoting Market Integrity and encouraged member economies to take actions to realize their commitments. Ministers also encouraged all economies to complete their progress reports on the implementation of ACT commitments by 2007. Ministers welcomed APEC efforts to conduct a stocktaking exercise of bilateral and regional arrangements on anti-corruption in cooperation with relevant international and regional organizations, and encouraged member economies to fully participate in the stocktaking activities.

Objective: Where appropriate, to self-assess progress against APEC Leaders' and Ministers' commitments on anti-corruption, transparency, and integrity and to identify capacity building needs to assist the ACT to identify priority areas for future cooperation.

EXECUTIVE SUMMARY

1. Summary of main achievements/progress in implementing the commitments of APEC Leaders and Ministers on anti-corruption, transparency, and integrity since 2004.

2. Summary of forward work program to implement Leaders' and Ministers' commitments.

3. Summary of capacity building needs and opportunities that would accelerate/strengthen the implementation of APEC Leaders' and Ministers' commitments by your economy and in the region.

I. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO UNCAC PROVISIONS

LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Take All Appropriate Steps Towards Ratification of, or Accession to, and Implementation of the UNCAC:

- Intensify our efforts to combat corruption and other unethical practices, strengthen a culture of transparency, ensure more efficient public management, and complete all appropriate steps to ratify or accede to, and implement the UNCAC.
- Develop training and capacity building efforts to help on the effective implementation of the UNCAC's provisions for fighting corruption.
- Work to strengthen international cooperation in preventing and combating corruption as called for in the UNCAC including extradition, mutual legal assistance, the recovery and return of proceeds of corruption.

I.A. Adopting Preventive Measures (Chapter II, Articles 5-13)

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RELEVANT UNCAC PROVISIONS

See below.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

- ***Article 5 Preventive anti-corruption policies and practices***

i. (Para 1 &2) Anti-Corruption Policy Guidelines for Public Organizations

At the beginning of every year, the ACRC creates "Anti-corruption Policy Guidelines" and holds a meeting to present the guideline to the inspectors of the central government agencies, local governments, education offices, and public-related organizations.

The establishment of the policy guidelines is to share the philosophy of the anti-corruption & integrity policy direction of the government with each public organizations at all levels and to provide information to help each organization establish its own anti-corruption and integrity policies so that the anti-corruption & integrity policy of the Korean government can be effectively implemented.

The policy guidelines mainly include 1) internal and external assessments on the national integrity level, 2) analysis of anti-corruption policy environment, 3) high priority projects of the year, 4) request for cooperation with the ACRC, and 5) anti-corruption best practices of each public organization of the previous year.

ii. (Para 4) International Community

(1) Ratification and Implementation of Major Anti-Corruption Conventions (Paragraph 4 Article 5)

As a party to the United Nations Convention against Corruption (UNCAC) and OECD Anti-Bribery Convention, Korea is committed to successful implementation of conventions. The Korean government enacted and put into force "Act on Combating Bribery of foreign Public Officials in International Business Transaction" from December 1998. Korea also completed the Phase 1, 2, and 3 evaluations in 1999, 2004, and 2011 respectively. In February 2008, the government ratified UNCAC and enacted "Act on Special Cases Concerning the Confiscations and Return of Property Acquired through Corrupt Practices" in Korea to complete implementation by closing a gap between domestic situation and conventions, and taking a lead in global anti-corruption movement.

(2) Participation of Anti-Corruption Working Groups of G20 and APEC (Paragraph 4 Article 5)

Korea is actively taking part in anti-corruption working groups in major economic cooperatives such as G20 and APEC. Chairing The Friends of the Chair (FOTC), the Korean government issued a proposal statement in 2003 and held a symposium on capability-building of anti-corruption for APEC members in 2009 to facilitate anti-corruption discussion in AP region. In 2010, Korea joined "G20 Anti-corruption Working Group", established in 2010 G20 Toronto Summit, and had an in-depth deliberation on Anti-corruption at the international level to contribute to adopting a concrete and effective "G20 Anti-corruption Action Plan" in 2010 G20 Seoul Summit. The Korean government will devote itself to proliferating global anti-corruption/integrity by building strong network among experts in G20 member countries.

(3) Launch of ACA Forum (Meeting of Heads from Asia Pacific Anti-Corruption Agencies) (Paragraph 4 Article 5)

'ACA (Anti-Corruption Agency) Forum' was designed for cooperation and capability building of anti-corruption agencies in the region. The first meeting was held in Seoul in November 2002. Member countries of ACA Forum are Korea, Hong Kong, Indonesia, Malaysia, Australia, Singapore and Philippines. After it made Terms of Reference for systemic operation of the Forum in 2007, the ACRC is functioning as secretariat office. The ACRC has opened and managed the official web page of ACA Forum (http://www.aca-forum.org) since July 2010, and co-hosted the 6th ACA Forum with ICAC of New South Wales, Australia.

(4) Anti-Corruption Cooperative Projects with Indonesia, Thailand, Vietnam, and Mongolia(Paragraph 4 Article 5)

With increasing requests from developing countries to transfer Korean anti-corruption policies and mechanism, Korea has been supported anti-corruption mechanisms in developing countries since 2007. In affiliation with UNDP, Korea conducted technology cooperation business projects to nurture anti-corruption capability of Bhutan and Bangladesh. It also signed MOUs for anti-corruption cooperation with Indonesia, Thailand, Vietnam and Mongolia to transfer Korean anti-corruption policies such as Integrity Assessment, Corruption Impact Assessment and other anti-corruption programs. In the year of 2011, the ACRC provided anti-corruption training courses for public officials from Indonesia(April) and Bangladesh(October), according to the MOU between the ACRC and KOICA(Korea International Cooperation Agency) which is responsible for providing grant aid programs for developing countries.

- ***Articles 7-9***

Republic of Korea has introduced and implemented following policies and measures in accordance with Article 7-9 of the UNCAC.

i. Policies and measures to prevent conflicts of interest

(1) Enacting and implementing Public Service Ethics Act

Republic of Korea enacted Public Service Ethics Act to guide public officials to meet their obligations by preventing corruption and securing fairness of the public sector.

Article 2-2 of the Act prescribes that conflicts of interest should be prevented preliminarily and public officials should not pursue their private interest abusing their authority. Articles following the Article 2-2 provide concrete initiatives such as Property Registration, Blind Trust of Stocks, Gift Declaration and Employment Restrictions of Retired Public Officials.

(Property Registration for Public Officials prescribed in Articles 3 through 14-3 will be described later.)

The initiative of Blind Trust of Stocks prescribed in Article 14-4 through 14-10 has been introduced to eliminate the connection between public officials' duties and stocks they hold. Under this initiative, elected and politically appointed officials, officials above 'A(Ga)'-rank of SES and chairs of public service related organizations are supposed to dispose or entrust their stocks valuing over 30 million KRW.

Gift Declaration initiative prescribed in Article 15 and 16 requires public officials to declare any gifts they receive from foreign governments, other organizations, or individuals. However, gifts under 100 thousand KRW and personal gifts from foreign individual do not have to be declared.

Articles 17 through 19 prevent inappropriate connection between public officials and private companies by restricting retired officials to be employed to certain companies. For 2 years, public officials above rank-4 and officials above rank-7 working in law enforcement, auditing, and issuing license are limited to get a job of private companies which are related to their former duties of last 5 years. This initiative was introduced to prevent retired public officials from exercising inappropriate influence on their former government agencies in favor of their new companies.

(2) Enacting and implementing Code of Conduct for Public Officials

The ACRC(Anti-corruption and Civil Rights Commission) of Korea enacted and has implemented the Code of Conduct for Public Officials, in order to set appropriate value and behavioral standards to help public officials not to be corrupted in conflict situations, including conflicts of interest, while carrying out their duties.

The Code of Conduct was created for public officials for the first time in 2003 in the name of "Code of Conduct for the Maintenance, etc. of Public Official's Clean-Handiness," based on the "Anti-Corruption Act" which was enacted on July 24, 2001. The application of the Code of Conduct has been extended to the executives and employees of public service related organizations since 2006.

Moreover, the Code of Conduct for Local Councilmen was separately enacted and promulgated as a presidential decree on November 2 in 2010, and has been implemented since February 3, 2011, particularly for local councilmen among local public officials, reflecting distinct characteristics of their status.

In order to prevent public officials from facing conflicts of interest while carrying out their duties, the Code of Conduct for Public Officials set 16 behavioral standards such as "Recusation for Conflicts of Interest (Article 5)," and "Prohibition of the Improper Use of Public Position (Article 10-2)." It also defines disciplinary measures for the violators.

As of December 2011, 1.6 million public servants in 1,257 agencies are subject to the code of conduct. (Administrative agencies 309, Local councils 244, Government-related organizations 704)

Based on the presidential decree enacted by the ACRC, each public organization should enact and operate the code of conduct tailored to its organizational characteristics and working conditions in order to secure effectiveness of the code.

Anyone who detect public officials' violation of the code of conduct can report the case to the ACRC or a Code of Conduct Officer in the agency concerned.
Regarding the reported case, the ACRC confirms the violation, informs the head of related officer's agency and receives result of the case handled, under article 10 of enforcement decree in Act on Anti-Corruption and the Establishment and Operation of the Anti-Corruption & Civil Rights Commission. The agency concerned handles the reported case, then notifies the result to the ACRC.

The ACRC conducts inspections in order to enhance compliance and secure effectiveness of the code, especially during holiday seasons when moral hazard is highly likely to occur in civil services. The ACRC reports violations to the agency concerned so that it can address the issue.

(3) Planning to enact Act on Prevention of Illegal Solicitation and Conflict of Interest

The ACRC is planning to enact a new law, so-called "Act on Prevention of Illegal Solicitation and Conflict of Interest" which deals with "conflict of interest," currently stipulated in the Code of Conduct for Public Officials (Presidential Decree), and penalties for the violation, in order to more effectively prevent and manage conflict of interest situations facing public officials.

To this end, the Commission has prepared to draw up this new law, by studying foreign legislation cases such as the U.S. or Canada, collecting opinions of experts, and holding open discussions since last year. Furthermore, it has made and distributed "Guidelines for Conflict of Interest" as a practical guide for public officials to fairly carry out their duties and to effectively respond to conflict of interest situations.

The "Guidelines for Conflict of Interest" suggests 4-step measures (self-diagnosis

check list – counseling about conflict of interest situations – managing conflict of interest – monitoring conflict of interest & taking disciplinary measures against violation) so that public officials themselves can assess corruption possibilities and resolve conflict of interest through the ethical counseling system.

(4) Conducting Corruption Impact Assessment

The Corruption Impact Assessment was designed as a preventive measure to review and remove corruption-causing factors out of laws and regulations when the bills are drafted. This assessment has been carried out since April 2006. When public organizations enact or amend laws and regulations, they are required to prepare a draft and relevant materials and to request the ACRC to conduct the Corruption Impact Assessment on the draft, right after they start consultations with concerned agencies. The ACRC reviews and assesses corruption-causing factors of the draft and recommends improvement measures and detailed examples of enactment so that they can reflect the recommendations into their draft before legislative examination.

The Commission has prepared its specific criteria for items to be reviewed and assessed when detecting corruption-causing factors out of laws and regulations. Currently, however, as some corruption cases related to conflict between private and public interests have been revealed, the ACRC revised its "Guideline for Corruption Impact Assessment" (Sep. 28, 2011), adding "possibility of a conflict of interest" into the specific criteria, and the revised criteria has been applied since January 1, 2012.

ii. Policies and measures to promote corruption reports by public officials

(1) Enacting and implementing Act on Anti-Corruption and the Establishment and Operation of the Anti-Corruption & Civil Rights Commission

Republic of Korea has a system for "corruption report and protection of corruption whistleblowers" based on the Anti-Corruption Act which was enacted in 2001. In addition, in order to strengthen corruption report by public officials themselves, they are required to report any corruption act they get to know or are forced/ asked to do, while carrying out their duties.

The ACRC, a representative anti-corruption agency in Korea, has made its various efforts to successfully establish the system, since the "Anti-Corruption Act" was enacted. In 2002 when the act was first implemented, the ACRC requested all public organizations to post "the system of corruption report and protection & reward of whistleblowers" on their bulletin boards and websites to promote the system. Also the Commission asked the organizations to set up a link on their websites to the KICAC (ACRC) online reporting center so that the corruption report and protection of corruption whistleblower system could be established in all public organizations successfully.

Furthermore, in the beginning of every year, the Commission recommends all public organizations to take measures to promote corruption reports and protection/ reward of whistleblowers in its "Guidelines for Anti-corruption & Integrity Policies," as well as holds meetings with compliance officers of central government agencies, local governments, offices of education, and public service related organizations, in order to share basic directions of the government's anti-corruption & integrity policies and jointly implement major policies with other public agencies. In addition, by conducting "Anti-corruption Initiative Assessment," the ACRC evaluates public agencies whether they are implementing the guidelines or not and supports the agencies to implement the concerned measures and guidelines in a practical way.

In the meantime, the Commission has maintained its institutional efforts to encourage public officials to report corruption by continuously revising and supplementing provisions of Anti-Corruption Act regarding corruption report and protection & reward of whistleblowers. For example, it expanded the definition of a corrupt act up to even indirect behaviors such as an act of forcing, recommending, or encouraging someone to engage in or concealing the acts (§2). Also the law stipulates that if a person suffers disadvantages or discrimination for his/her report of corruption or if there are reasonable grounds to assume that the reporter may experience such disadvantages or discrimination, from Articles of the "Protecting Those Who Report Specific Crimes Act" shall apply mutatis mutandis to the investigation and the criminal procedures in connection with the reported act of corruption (§ 64) so that the identity of the reporter cannot be revealed. In addition, to encourage corruption reports, the ACRC is making efforts to improve and enhance the Anti-Corruption Act, for example, by adding provisions regarding awards and raising the amount of rewards (§ 71 of the president decree)

(3) Operating Corruption Report Center

The ACRC is running "Corruption Report Center (off-line)" to protect identity and confidentiality of whistleblowers (corruption reporters) as much as possible. The center provides various forms of counseling for corruption report, through a visit, call, internet, or outcall. To provide better counseling, retired public officials and counselors with abundant experience are designated in the center. Particularly, to facilitate corruption reports, the center opens a hot-line for corruption report counseling twenty-four seven.

< Corruption Report Handling Process >

Receiving corruption report (Reporter → ACRC) →	Fact-finding (ACRC) →	Referring the case (ACRC → Investigative agencies) →
ACRC receives corruption reports via internet, visit, post, and fax with reporter' real name	The report center designates the reported case to the concerned division	ACRC approves the case through its all committee member meeting
ACRC Reviews the corrupt act reported (Filtering)	The division confirms the fact within 60 days after receiving the report	ACRC requests an investigative agency to investigate the alleged corrupt act
Investigating (Investigative agencies) →	Informing the result (Investigative agencies → ACRC) →	Informing the result (ACRC → Reporter)
The concerned investigative agency investigates the case	The investigative agency informs ACRC of the investigation result of the referred case within 60 days	ACRC informs the reporter of the result The reporter may file an objection within 7 days after he/she is informed the result

iii. A measure to register (disclose) property of public officials

(1) Implementing Property Registration System for Public Officials

Property Registration System has been introduced to prevent illegal property accumulation of public officials by regularly requesting them to disclose information on property status of themselves and their family members.

A legal basis for the system lied in the enactment of Public Service Ethics Act in 1981, and the first registration for 644 high-rank officials was made in 1983. In 1993, voluntary asset declaration of the president Kim Young-Sam drove reinforcement of the Property Registration and System. As a result, the Public Service Ethics Act was revised with extension of the number of target officials above Grade-4 and officials above Grade-7 working in such as taxation, auditing, and law enforcement areas.

After some additional revisions, about 180 thousand public officials are registering their property status as of December of 2011 and 5,400 high-rank officials such as President of Korea, members of the National Assembly, rank-'A(Ga)' of SES, and chairs of public service related companies are registering and disclosing their property status, promoting transparency of the government.

- ***Article 10 Public reporting***

i) Status of information disclosure system

A Petitioner requests information disclosure →	ACRC decides Information disclosure →	ACRC notifies decision to the petitioner →	The petitioner pays Fees →	Information Disclosure

- Online Information Disclosure Online Service

- ACRC built information disclosure system in 2006 to provide one-stop online services. (www.open.go.kr)

- Active Use of Information Disclosure System

- Handled 130,000 cases (2006)→200,000 cases (2007)→230,000 cases (2008) → 300,000 cases (2009)
- Online Service Usage rate: 40%(2006) → 52%(2007) → 60%(2008) →66%(2009)

ii) Details of Information Disclosure System

- Purpose of Information Disclosure System (Article 1 of Act)

- By defining people's right to request information disclosure and organizations' obligation to provide information possessed and managed by the organizations
- In order to grant the citizens' right to know and secure participation and transparency of government administration.

- Scope of Information Disclosure (Article 2 No.1 of Act)

- 'Information' refers to any document that is composed, acquired, or managed officially by a public institution (Including e-document) as well as the items recorded in media like photo, picture, plan, tape, slide, and any other item in accordance with the aforementioned items.

- Exceptional non-disclosure: Information which falls into non-disclosure items under the provisory clause shall not be disclosed. (Act Article 9. Section 1. No.1-8)

- Organizations subject to information disclosure (article 2 of Act, article 2 of Decree)

- Governments organizations, local councils, public organizations stipulated in article 4 of Act on the Management of Public Agencies, and other organizations defined by the presidential decree

• Person who can demand information disclosure (article 5 of Act, article 3 of Enforcement decree)
- All citizens and foreigners (A person who lives in Korea with a certain residential address or who stays in Korea temporarily for academic and research purposes) defined by the presidential decree
• Type of Decision on Information Disclosure and details (article 13 of Act, article 12 of Decree)
- Full disclosure: date, place, methods, fees
- Partial disclosure: basis of partial disclosure, process of appeals
- Non-disclosure: basis of non-disclosure, process of appeals
• Decisions on disclosure are made within 10 days after the date of request and can be extended up to 10 days. (Article 11 of Act)

• Process of appeals (article 18-20 of Act)
- Appeal against the decision made to be non-disclosure or partial disclosure without application of transposition system of administrative decision
- Filing an objection (article 18 of the Act), Administrative appeals (article 19 of the Act), Administrative litigation (article 20 of the Act)

• Organization and Management of The deliberation committee for information disclosure (article 12 of Act, article 11 of Enforcement decree)
- Subject Organizations: government organizations, local councils, education offices, state-run companies
- Number of members/Term: 5-7 people (A half of members should be selected from outside) / 2 years (Serving one more term is allowed)
- Deliberation details: reasons for non-disclosure, non-disclosure appeals, disclosure standards
• Organization and Management of The committee for information disclosure (article 22-23 of Act, article 19-26 of Enforcement decree)
- Number of people who has right of appointment / number of members: Minister of Public Administration and Security / 9 people (5 from private sectors, 4 from the government)
- Term/opening time: 2 years (Serving one more term is allowed) / semi-annual
- Function: policy making and deliberation for information disclosure in public organizations

• ***Article 12 Private sector***

i) Policy Council for Transparent Society(Para 1 Article 12, Article 13)

Republic of Korea has introduced and implemented a following measure in accordance with Article 12 of the UNCAC.

- Operating **Policy Council for Transparent Society**

The ACRC pushed forward setting up the Policy Council for Transparent Society to send a message at home and abroad that the Korean government is working hard to eradicate corruption as well as to make cooperative networks with diverse sectors of society in order to enhance the national brand, the level of integrity and trust which are core competitiveness in the global arena.

The Policy Council for Transparent Society was launched December 12, 2009 with 26 organizations and groups in 9 sectors such as public service, politics, economy, civil society, state-owned companies, academia, media, and local governments. The council is taking a role to facilitate communication and cooperation between the public and private sectors. The four main functions of the council as follows;

First, the council develops policy agenda by sector to create a clean and faithful society, so that the public sector carries forward anti-corruption policies, while the economic sector supports companies to establish and disseminate ethical management, and the political sector pushes ahead with a culture of clean election.

Second, the council facilitates cooperation among various sectors by sharing project plans by sector and revitalizes networks by discovering and disseminating best practices. At the beginning of each year, each sector makes presentations on their project plans so that other sectors can share the contents and jointly carry forward the projects after collecting various opinions from other related sectors.

Third, the council discovers anti-corruption policy agenda at policy symposiums and makes efforts to upgrade the level of national integrity, as well as to change the awareness on national credit ratings.

Fourth, the council collects various opinions on improvements of laws and regulations which undermine transparency and trust and supports the institutional improvements utilizing the functions of the ACRC to make corrective recommendations for institutional improvements.

The committee for transparent society is making continuous efforts to enhance the level of anti-corruption and integrity of the nation as a cooperative body of all social sectors in order to enhance the national brand. Many social groups and organizations such as feminist movement groups, civil societies, and professional associations agree on the purpose of the committee and are actively participating in joint efforts.

The committee also signed an MOU with Korea Broadcasting System (KBS) to

strengthen the ties with the media sector and jointly pushed forward various events to enhance integrity, such as conducting "World of Integrity" campaigns and holding joint symposiums. The ACRC also will do its best to enhance integrity and social trust as a responsible government agency.

Five leading economic organizations in Korea and the economic consultative group led by the Korean Institute of Certified Public Accountants played their essential role in leading success of the "Policy Council for Transparent Society" by conducting public - private discussions on cooperative projects of the council and encouraging private players to participate in their concerned projects through effective promotion.

With the cooperation of the consultative group, ethical management educations for private companies have been carried out, twice in 2010 (74 participants from 69 companies) and 5 times in 2011 (246 participants from 160 companies), following a pilot test in 2009. Moreover, the ACRC has published an web-magazine, "Corporate Ethics Brief" which deals with the latest trends at home and abroad, best practices, and articles of prominent figures regarding ethical management, and distributed it to 1,577 (as of December 2011) people of public and private companies, economic organizations, and academia. By doing this, the Commission has contributed to raising anti-corruption awareness and disseminating the importance of ethical management to domestic companies and the whole society.

Working with its main partner, the Korean Institute of Certified Public Accountants, the ACRC also has conducted educations about IFRS and co-hosted "Symposium for Transparent Accounting to Realize Fair Taxation" and "Symposium to Evaluate Accounting Transparency in Private and Public Sector," making its efforts to enhance transparency in the economic sector.

ii) Business Ethics Briefs

The ACRC has published a monthly webzine, "Business Ethics Briefs" to support ethical management of corporations for public offices and private companies, since April 2005. The webzine contains the latest trends at home and abroad, best practices, and articles written by renowned people, related to corporate ethical management.

The webzine has diversified its forms such as inserting webtoons dealing with ethics, and interesting video clips about clean public officers. Furthermore, the ACRC has made the "Business Ethics Briefs" a communication platform to grasp needs of diverse stakeholders and to promote active participation as well as to provide essential information.

As a result, the webzine has contributed to disseminating the importance and awareness on the ethical management to local companies and the public. In addition, it has contributed to promoting the introduction of ethical management in domestic industries and disseminating the culture of corporate ethics. It also has introduced international trends and changes of ethical management to local companies so that they can properly respond to the global trends. As of December 2011, the webzine is being provided to 1,577 subscribers in public and private companies, economic organizations, and academia related to ethical management.

iii) Corporate Compliance Officials Education & Corporate Ethics Workshop

The ACRC developed "Ethical Management Education Program" working with an outsourcing research institute in 2009, as the necessity of practical education programs for compliance officials was raised, in order to address difficulties of local companies and support to disseminate ethical management in a systematical way.

In the first year of the development, in 2009, pilot courses were open to 26 officials of 24 companies, and later, the courses were open to 246 officials of 160 companies, five times in 2011. The education course focused on capacity building of compliance officials by analyzing their core competence and the role as a main driving engine of their organization.

In 2011, the ACRC operated the education course with more diverse programs, such as special lectures of professionals about the latest issues (ISO26000, IFRS) related to ethical management, introduction of best practices, and discussions on ethical conflict situations.

In addition, the ACRC has held "Corporate Ethics Workshop" once in a year since 2008, for compliance officials of public offices, private companies, and related organizations in order to establish networks among compliance officials. Currently, 109 officials of 81 companies participated in the workshop in 2011, increased from 43 of 30 companies in 2008, showing growing interest and participation, and the participants also showed high level of satisfaction (84.8 points out of 100) about the workshops.

The education programs and workshops are making foundation to take the global changes as an opportunity as well as strengthening the capability of companies based on sharing awareness on the importance of ethical management.

iv) Anti-Corruption Conferences and Meetings in Private Sector (Article 12)

As ISO and ISO 26000 have been discussed since 2007 and took effect on November

1, 2010, transparency and ethics are now rising as vital components of survival and competitiveness of companies.

In this regard, the ACRC held "Symposium to Increase National Integrity" in 2009 to create transparent and fair business environments and to make the culture of ethical management of companies take deep roots. In 2010, "Anti-corruption Symposium for Creating a Clean and Advanced Country" was held to establish anti-corruption and integrity policy directions and strategies to enhance transparency and integrity of the government. In 2011, "Symposium for Accounting Transparency to Realize Fair Taxation" was also held to analyze current situations of accounting in the private sector and to enhance accounting transparency.

- ***Article 13 Participation of society***

i) Public education programs for students(Paragraph 1)

(1) Adding Integrity Contents to Primary & Secondary School Textbooks (Para 1, Article 13)

The ACRC has carried forward that primary and secondary schools add integrity contents in their newly revised textbooks since it is all the more important to educate young children in public education system establish proper integrity values.

Particularly, the ACRC has continuously made efforts in adding more integrity contents to the revised Ethics textbooks. As a result, about 125 pages related to integrity contents were included in the Ethics textbooks for high schoolers and 8th grade students in 2010.

Through constant consultation with the Ministry of Education, Science and Technology, the ACRC successfully added two separate units such as "Rule of Law, and Ethics for Integrity and Anti-Corruption" and "Concept and Definition of Corruption" to a supplementary school textbook, "Global Leader, Korean Children's Values: Laws, Integrity and Filial Piety", published by the Ministry.

In 2011, the ACRC will try to expand textbook contents directly related to integrity, such as "Corruption Phenomenon and Ethics". For example, contents on ethical obligation and value conflict will be included in the Ethics textbooks.

(2) Operation of Integrity Model Schools (Para 1, Article 13)

The ACRC has designated and operated integrity research model schools where students can experience diversified experience, integrity education with teachers and parents and establish healthy values and proper habits at school.

The ACRC provided 10 million won for each designated school so that those model schools can develop their own experience programs and study materials such as case studies of integrity conflicts at school, and research on great men of integrity in history.

Especially, in 2011, a website for those model schools was open to post their outcomes and performances every month so that they can analyze their performance in a more systematical way and share best practices among the model schools.

The year 2011 was the first year to change the name, "Integrity Model Schools" to "Integrity Education Research School." In 2011, two times of workshops were held with presentations on best practices and group discussions, facilitating communication and information sharing among participants from each school. In addition, performance briefings were held by each school in October ~ December, and by the Commission in December, to share their performance.

(3) University Student Integrity PR Group (Para 1, Article 13)

The university student integrity PR group was established to improve their integrity values and spread integrity culture through their novel and creative PR ideas. Since the young students are familiar with new media such as twitter and blogs, it will be more helpful to strengthen integrity promotion on line.

Over the last 3 years of since implementation, college student teams have been formed with 4-6 members per a team by region, and they have made considerable contribution to raising awareness about integrity at their campus and community by performing integrity campaigns, voluntary activities and club activities utilizing their own contents. In 2011, 19 teams had a kick-off ceremony in May and carried out various activities such as creating contents (play, interviews, UCCs) regarding integrity, performing campaigns, and other various activities including online PR by blogs. The commission held 'University Student Integrity PR Group Performance Briefing & Closing Ceremony' where PR Groups reported on their activities and performance and the best performance team was given the award to visit Australia, one of the corruption-free advanced countries, so that they could experience Australian citizens' sense of integrity and integrity policies of the Australian government.

The 3rd PR Group of 99 graduated members is expected to carry out integrity activities in their daily lives and to send their public service messages about integrity.

ii) Anti-corruption information activities for citizens(Paragraph 1)

(1) "World of Integrity" Campaign (Para 1, Article 13)

The ACRC declared 2010 as "the beginning year to make Korea a country of integrity" and conducted various campaigns in partnership with private sector. The campaign came after the Korean government realized that integrity level of Korea does not live up to its status as World's 15th largest economy, hampering it from joining ranks of advanced countries.
Advanced countries maintain the integrity level befitting to their economic status by practicing ethics and integrity in every fields of their society, based on governmental transparency and public officials' integrity. Korea needs to significantly raise its national integrity to become a member of the advanced group. To this end, one million officials in public services must serve as a good example by mandating anti-corruption and integrity in their daily lives. Particularly, as Korea became the chair country of G20 Summit, it was required to improve the national integrity living up to its status in international community. Taking that fact into account, the ACRC carried out the campaign in both of public and private sectors, in order to make integrity part of citizens' daily lives.

As the first step, the ACRC proclaimed the beginning year of "World of Integrity" Campaign in a meeting for anti-corruption policy direction in January, 2010, and established Basic Plan in February, 2010. After collecting opinions from economists and civil activists, the ACRC finalized the Basic Plan.

The ACRC made promotion logo and song for the campaign and held a welcoming ceremony to announce it in Seoul Station Plaza and Express Bus Terminals in Seoul on May 7. Korean association of Certified Public Accountants, Association of Korean Female Organization, and other civic groups attended the ceremony.

The second round of the campaign was held in Pusan, Daejeon, Incheon, Kwangju and Chuncheon from June 10 to 11. The campaign was conducted in local areas in order for anti-corruption and integrity to take root in our society as cultural icons and improve public awareness through cooperation and participation in various sectors.

Around 3,000 people from civic groups, local councils and public organizations took part in the local campaign. Senior officials, heads of local councils, civic groups, and principals of integrity model schools participated and made pledge of "integrity", distributing giveaways to the public in the campaign. Also the ACRC made and displayed promotional banners in the event and surveyed local residents on anti-corruption awareness, to offer a chance to revisit the significance of anti-corruption and integrity.

The ACRC realized national integrity cannot be earned only by the effort of public sectors and public participation and cooperation is indispensible. The ACRC started joint movements to create a climate of anti-corruption and integrity in our society by signing Memorandum of Understandings (MOU) with various civic groups.

The movement triggered civic groups' voluntary efforts to practice anti-corruption and integrity. "Association to Practice Transparency and Trust in Society" consisting of groups from economic and civil groups was set up in December, 2009. The association signed a MOU with KBS in June, 2010. The association actively participated in local campaigns with 4 symposiums and KBS promoted the campaign.

The ACRC signed MOUs with various construction associations to fight corruption in the construction sector in December 2009 and held International Conference to enhance transparency in the construction industry in November 2010. Association of Korean Certified Public Accountants and the ACRC held a symposium to build transparent society and sharpen national competitiveness in April, 2010. To strengthen integrity in education sector, the ACRC signed MOUs with Korean Federation of Kindergartens and Associations of Private Junior High Principals, to provide education for sound values for students.

In addition, the ACRC helped university students and parents to organize integrity volunteering corps to stage campaigns at schools and parks in local areas. Essay-writing, play and speech contest events, sponsored by ACRC, contributed to diffusing a culture of integrity in our society.

In 2011, the ACRC held online events of 4 times, using internet, blogs, and SNS to raise awareness of our next generation - students and young adults, so that we could form a social consensus on the sense of integrity in our daily lives as well as facilitate participation of young people to spread a culture of integrity.

(2) Public PR, Press PR (Para 1, 2 Article 13

Press PR is an efficient tool to promote anti-corruption movement as being proved in other countries. However, the ACRC restricted "Naming and Shaming" strategy, which publicizes irregularities of individuals or organization, to the minimum level. Instead, the ACRC took a positive approach to introduce best practices of integrity in order to enhance public awareness on anti-corruption.

The ACRC informed Korean citizens of best practices and pan-societal effort made in the advanced countries. The ACRC and media covered stories about anti-corruption government agencies in Finland, Sweden and France in September 2009. In 2010, the

ACRC and the newspaper covered news in Indonesia, Vietnam and Thailand, where we support anti-corruption policy-making, in order to promote their collaboration with the international society in fighting corruption.

KOBACO produced advertisement for public interests to report illegal solicitation in counseling with the ACRC, and other broadcasting stations transmitted this advertisement for 3 months beginning from February 2010.

In keeping step with new social media such as twitter and facebook, the ACRC opened its accounts in twitter, facebook and other social network sites for interactive communication. Using new communication channels, the ACRC informs public of news related to anti-corruption, encourages participation in anti-corruption movement and listens to peoples' voices over the issue. Especially in 2012, the ACRC has developed an application, "World of Integrity" to help people use contents regarding integrity more easily in their daily lives.

(3) Corruption Report Center (Para 2 Article 13)
The ACRC receives and handles anti-corruption reports. In order to protect the privacy of the accusers, the ACRC set up Corruption Report Center in several areas. Corruption reports are made through various channels such as visits, phone calls, online and outcalls. ACRC placed experienced counselors for more substantive advisement. Particularly, 24 hour hot line for Corruption report is in operation to facilitate reporting.

Receipt on corruption

Receipt on corruption (Reporter → ACRC) →	Confirmation of corruption (ACRC) →	Transfer of the case (ACRC → Inspection agency) →
Report by visit, mail, fax or online with real name	Corruption center assigns the case to the deliberation department	ACRC decides the case in a general meeting
Confirm eligibility of corruption report (Filtering)	Deliberation department confirms the case within 60 days from the date of being reported(Extension of 30 days when needed)	Request to inspection agency for corruption case (BAI, Prosecutors, Police, Regulatory authorities)
Investigation (Investigation agency) →	Notification of results (Investigation agency → ACRC) →	Notification of handling results (ACRC → reporter)
Investigation by the agency concerned	Investigation agency notifies the result of the case to ACRC within 60 days from the date of being transferred. (Extension if needed)	ACRC notifies a reporter the results A reporter can file for an appeal with ACRC within 7 days from the date of being notified.

(4) Act on the Protection of Public Interest Whistleblowers (Para 2 Article 13)

Not only corruption in public sectors, but also infringement on public safety, health, environment and fair trade are serious social problems which breach peoples' trust and interests. Public Interest Whistleblowers Protection System, under which informers are protected, was adopted to prevent infringement on public interests in private sectors. Act on the Protection of Public Interest Whistleblowers was passed in the National Assembly in March 2011 and has taken into effect since September.

Anyone who detected possible infringement on public interests can make a report to the company, organization, the regulatory watchdog, investigation agency, or the ACRC. Any activities violating public health, safety, environment, customers' interests and fair trade will be under administrative adjudication or criminal penalty.

With the enactment of the law, the ACRC has promoted the law to encourage public-interest violation reports and to raise anti-corruption awareness. The Commission has held briefing sessions by region for 3,517 public officials in 11 cities and provinces as of March 2012. In addition, it aired TV ads on terrestrial and cable TV channels and placed public campaigns on trains and outdoor billboards.

I. B. Criminalization and Law Enforcement (Chapter III)

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Korea will conduct the peer review for the UNCAC Chapter III and IV in 2012. Thus, we consider that we could report this part of template when we are done with our review for the UNCAC to save the resources and prevent duplication.

I.C. Preventing Money-Laundering

RELEVANT UNCAC PROVISIONS

- Article 14 Measures to prevent money-laundering

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

i) AML/CFT Framework

The history of the AML/CFT system in Korea started in earnest with establishment of Korea Financial Intelligence Unit (KoFIU) and enactment of the Financial Transaction Reports Act and the Proceeds of Crime Act in November 2001.
KoFIU was established pursuant to Article 3 Paragraph 1 of the Financial Transaction Reports Act (FTRA) and Article 5 of the Enforcement Decree of the FTRA in order to effectively implement the AML/CFT system. KoFIU was originally within the Ministry of Finance and Economy (MOFE), but as a result of the government reorganization in February 2008, has been transferred to the Financial Services Commission (FSC). KoFIU comprises AML/CFT experts from the FSC, Ministry of Justice (MOJ), National Police Agency (NPA), National Tax Service (NTS), Korea Customs Service (KCS) and Financial Supervisory Service (FSS). The independence and autonomy of KoFIU is guaranteed by law. KoFIU works as an institutional link between financial institutions and law enforcement agencies by receiving suspicious transaction report (STRs) from financial institutions, analyzing the STRs, and disseminating them to law enforcement agencies for further action. KoFIU is also the primary organization responsible for AML/CFT policy formulation and implementation, AML/CFT supervision and education of financial institutions.
The Financial Transaction Reports Act, which was enacted in November 2001, is a key AML/CFT law in Korea. It provides for establishment and operation of KoFIU, KoFIU's authorities to collect, analyze, disseminate financial transaction information, and preventive measures to be undertaken by financial institutions and casinos such as CDD, STR, CTR, and establishment and operation of internal control systems.
The Proceeds of Crime Act (POCA), also enacted in November 2001, criminalizes money laundering and provides for confiscation of proceeds of serious crimes. Under Article 3 of POCA, any person who disguises acquisition or disposition of criminal proceeds, disguises the origin of criminal proceeds or conceals criminal proceeds is punished by imprisonment not exceeding five years or a fine not exceeding KRW 30 million. Article 8 of POCA provides for confiscation of criminal proceeds and Article 10 of the same Act provides for confiscation of property of equivalent value of criminal proceeds.

ii) Anti-money laundering regime

(1) Customer Due Diligence (CDD)

- **Overview of the Customer Due Diligence (CDD) Regime**

In Korea, financial institutions are required to conduct customer due diligence (CDD) under the Act on Real Name Financial Transactions and Guarantee of Secrecy (Real Name Financial Transactions Act) and the Financial Transaction Reports Act (FTRA). The Real Name Financial Transactions Act, which was enacted in 1993, provides for basic CDD measures. It effectively prohibits opening or maintaining of anonymous accounts or accounts under fictitious names and requires financial institutions to check and verify the real name of the customers.

Amendment of the FTRA, which was promulgated in January 2005 and came into force in January 2006 expanded the scope of the CDD in terms of the type of financial transactions subject to CDD requirement and the types of customer identification information to be checked and verified.

- **When CDD is required**

Opening of new accounts
Article 5-2(1)(1) of FTRA requires financial institutions to identify and verify the identity of their customers when they open new accounts. Article 10-2(2) of the Enforcement Decree of the FTRA defines "opening a new account" to mean "entering into a contract with a financial institution to initiate a financial transaction". Article 2(2) of the FTRA defines "financial transactions" comprehensively, such that CDD is required whenever establishing business relations.

Occasional financial transactions above the designated threshold
Article 5-2(1)(1) of FTRA requires customer identification and verification for occasional transactions above the designated threshold of KRW 20 million for domestic currency transactions and USD 10,000 for foreign currency transactions. An occasional transaction is a financial transaction carried out without using an account opened at a financial institution (Article 10-2(2) of the Enforcement Decree of the FTRA). It includes, for example, receiving and paying cash without use of an account (including remittance or deposit without a passbook); obtaining or cashing a cashier's check, purchasing or selling traveller's checks; safeguard deposit; buying and selling prepaid cards, and wire transfers.

- **Required CDD measures**

Under Article 5-2(1)(1) of the FTRA and Article 10-4 of the Enforcement Decree of the FTRA, financial institutions are required to identify and verify the identification of cus-

tomers. The customer identification information that financial institutions are required to check and verify for each category of customers is set out in the table below

Individuals : real name(defined under Article 2(4) of the Real Name Financial Transaction Act), resident registration number, address, contact information
For-profit legal entities : Real Name as per the business registration certificate, business registration number, business type, locations of headquarters and offices, contact information, real name of the representative
Non-profit legal entities and other organizations : Real name, purpose of business establishment, locations of the main offices, contact information, real name of the representative
Foreigners and foreign organizations: Information specified in the corresponding category of the three categories above, nationality, location of local residence or office

(2) Suspicious Transaction Report (STR)

- **Definition of Suspicious Transaction Report**

Suspicious Transaction Report (STR) is one of the core measures to fight money laundering and terrorist financing. Financial institutions and casinos are required to file STRs when they have a reasonable ground, based on their expertise and subjective judgment, to suspect that the funds that they have received are proceeds of crime or that the customer is engaged in money laundering or terrorist financing.

- **Basic Framework**

What must be reported
Financial institutions and casinos are required to report to KoFIU when 1) they have a "reasonable ground" to suspect that the funds they received in relation to a financial transaction are illegal assets or that the customer is engaged in money laundering or financing for offences of public intimidation and the amount of such transaction is or above KRW 10 million (USD 5,000 for foreign currency transactions), or 2) they have reported to a law enforcement agency any funds that they have come to know are proceeds of crime or any transaction that they have come to know is involved in money laundering. For failures to report suspicious transactions, Korea Financial Intelligence Unit can apply sanctions such as disciplinary actions for employees of financial institutions and administrative fines for the financial institutions.

Financial institutions and casinos can file a suspicious transaction report even when the amount of transaction is below the reporting threshold.

How to file STRs
Front desk tellers report to the reporting officer in his or her organization if based on his/her expertise, experience, and the usual transaction profile of the customer, it is suspected that the transaction or the fund is related to money laundering or terrorist financing.The reporting officer reviews what was reported by the front desk teller, and if there really is a reasonable ground to suspect money laundering or terrorist financing, he/she reports the transaction using the standard STR form, which is annexed to the Financial Transaction Report and Supervision Regulation. The STR must include the name of the reporting entity, the ground for suspicion, information about the customer, a description of the transaction, the list of data kept in relation to the reported transaction. The STR can be filed on-line, in hard copy, or in electronic files contained in floppy disks. When a transaction must be reported urgently, it can be reported through FAX or telephone and then can be supplemented afterwards.

Dissemination of STRs
KoFIU conducts comprehensive analysis of the STRs it receives based on 1) the information contained in the STR, and 2) additional information that it obtains such as foreign exchange transactions data, credit information, and information provided by foreign FIUs, etc. When it finds reasonable grounds to suspect that the reported transaction is related to money laundering to terrorist financing, it provides the STR to an appropriate law enforcement agency. The law enforcement agencies to which it disseminates STRs include the Public Prosecutor's Office, National Police Agency, National Tax Service, Korea Customs Service, Financial Services Commission, and National Election Commission. The law enforcement agencies conduct further investigation on the cases and take appropriate law enforcement actions.

(3) Currency Transaction Report (CTR)

- **Definition of Currency Transaction Report**

On January 18, 2006, Korea implemented a Currency Transaction Report (CTR) system under which financial institutions casinos ("reporting entities") are required to report to KoFIU all cash transactions above a designated threshold. Under Article 4-2 of the FTRA and Article 8-2 of the Enforcement Decree of the FTRA, reporting entities are required to report to KoFIU when the amount of cash paid or received in transactions conducted in one trading day on the same name is above the threshold, which is currently KRW 20 million. While Suspicious Transaction Report (STR) relies on the expertise and subjective judgment of employees of reporting entities, CTR requires reporting entities to report all transactions that meet certain objective criteria without making any subjective judgment.

- **How CTRs are utilized**

The CTR data are used in strategic analysis and also used as supplementary data for the individual analysis of STR. The effectiveness of information analysis is expected to be enhanced when STR data are analyzed in conjunction with CTR data since such comprehensive analysis could help analysts get a better understanding of the flow of suspicious funds.

II. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO APEC INEGRITY STANDARDS (CROSS CHECK WITH I.A. ABOVE)

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LEADERS' AND MINISTERS' COMMITMENTS

See below.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Santiago Commitment/COA: Strengthen Measures to Effectively Prevent and Fight Corruption and Ensure Transparency by Recommending and Assisting Member Economies to:

- ***Establish objective and transparent criteria that assure openness for merit, equity, efficiency for the recruitment of civil servants, and promote the highest levels of competence and integrity;***

See response above (I.A.).

- ***Adopt all necessary measures to enhance the transparency of public administration, particularly with regard to organization, functioning and decision-making processes;***

See response above (I.A.).

- ***Develop and implement appropriate public financial disclosure mechanisms or codes of conduct for senior-level public officials [SOM III: Guidelines];***

See response above (I.A.).

III. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO SAFE HAVENS (CROSS CHECK WITH I.C. ABOVE):

LEADERS' AND MINISTERS' COMMITMENTS

See below.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Santiago Commitment/COA: Deny safe haven to officials and individuals guilty of public corruption, those who corrupt them, and their assets:

- ***Promote cooperation among financial intelligence units of APEC members including, where appropriate, through existing institutional mechanisms.***

- ***Encourage each economy to promulgate rules to deny entry and safe haven, when appropriate, to Officials and individuals guilty of public corruption, those who corrupt them, and their assets.***

- ***Implement, as appropriate, the revised Financial Action Task Force (FATF) 40 Recommendations and FATF's Special Recommendations (Santiago Course of Action)***

Based on the 3rd FATF on-site evaluation in November 2008, Korea was rated Fully Compliant (FC), Largely Compliant (LC) or Partially Compliant(PC) with 38 out of the 40+9 Recommendations. Korea's 3rd follow-up report, submitted in October 2010, recognized Korea's commitment to implementing an effective AML/CFT regime with the reduction of the STR(suspicious transaction report) threshold and implementation of the AML/CFT Regulation for the financial sector.
Korea is seeking means to consistently and actively participate in the working groups to solidify Korea's position in the FATF as a recently added full member and to actively partake in policy discussion.

- Work cooperatively to investigate and prosecute corruption offenses and to trace freeze, and recover the proceeds of corruption (Santiago Course of Action)

- ***Implement relevant provisions of UNCAC. These include:***
  - ***Art. 14 (Money laundering)***

Please refer to I.c(i)

This Section will be also written after the UNCAC review.

IV. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO PRIVATE SECTOR CORRUPTION:

LEADERS' AND MINISTERS' COMMITMENTS

See below.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Santiago Commitment/COA: Fight both Public and Private Sector Corruption:

• ***Develop effective actions to fight all forms of bribery, taking into account the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or other relevant anticorruption conventions or initiatives.***

As a party to the OECD Anti-Bribery Convention, Korea is implementing the Act on Combating Bribery of Foreign Public Officials in International Business to fulfill the OECD Convention from 1999 when the Convention took effect.
Now we are subject to the third phase of the evaluation on the Convention in 2011, having completed the first phase in 1999 and the second phase in 2004.
Last April, we submitted answers to written questions on the third phase of the evaluation. In two weeks, from May, 31st to June 2nd, evaluating countries of Finland, Israel and the Secretariat will conduct on-site visits to Korea.
Korean government is committed to carrying out the OECD Anti-Bribery Convention faithfully led by the Ministry of Foreign Affairs and Trade, the Ministry of Justice, the Supreme Court of Korea, the Supreme Prosecutor's Office, Anti Corruption and Civil Rights Commission, the Ministry of Strategy and Finance and the National Police Agency.

In particular, Korea is focusing on enforcing the Act on Combating Bribery of Foreign Public Officials in International Business in line with the purpose of the OECD Convention.
We also plans to attend the OECD Working Group conference on Bribery scheduled to be held in June and October in the hope that we will complete the third phase of the evaluation successfully.

Korea also has continued to join the global efforts to fight against foreign bribery by participating international conferences and outreach programmes. For example, Anti-corruption and Civil Rights Commission and delegations from relevant Ministries attended the 7th Regional Conference of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific to be hosted in late September in New Delhi, India. Furthermore, Korea actively participated in the technical assistance workshops as a speaker including Bangkok NACC & OECD joint workshop as well as KPK & OECD workshop held in Bali.

• ***Adopt and encourage measures to prevent corruption by improving accounting, inspecting, and auditing standards in both the public and private sectors in accordance with provisions of the UNCAC.***

Korea signed the UNCAC in Merida, Mexico in December, 2003. To implement the UNCAC, we enacted "Act on Special Cases Concerning the Confiscations and Return of Property Acquired through Corrupt Practices" in February, 2008, ratifying the Convention in March of the same year. Now, we are in the process of legislating enforcement decree of the Act to institutionalize the national policy on the recovery of assets.

Korea is going to be reviewed in 2012, the third year of the first review cycle. We will be committed to the full implementation of the Convention. To this end, we will actively participate the 2nd Meeting of the Implementation Review Group to be held in late May of this year, paying attention to the review processes and results of other countries.
In addition, we will attend working-group level discussions as well. For the 2nd Meeting of the Working Group on Prevention of Corruption, to be held in late August of this year, there have been collecting good examples of each state party implementing Awareness-raising policies and practices, the Article 8(Code of Conduct), and the Article 10(Public reporting) of the Convention. We have compiled the current status and good practices on these and will send it to the Secretariat in the middle of May. We will continue to actively join the efforts to share and gather information at working group levels in the future.

• ***Support the recommendations of the APEC Business Advisory Council (ABAC) to operate their business affairs with the highest level of integrity and to implement effective anticorruption measures in their businesses, wherever they operate.***

V. ENHANCING REGIONAL COOPERATION

LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Strengthen Cooperation Among APEC Member Economies to Combat Corruption and Ensure Transparency in the Region:

- Promote regional cooperation on extradition, mutual legal assistance and the recovery and return of proceeds of corruption.
- Afford one another the widest measure of mutual legal assistance, in investigations, prosecutions and judicial proceedings related to corruption and other offences covered by the UNCAC.
- Designate appropriate authorities in each economy, with comparable powers on fighting corruption, to include cooperation among judicial and law enforcement agencies and seek to establish a functioning regional network of such authorities.
- Sign bilateral and multilateral agreements that will provide for assistance and cooperation in areas covered by the UNCAC. (Santiago Course of Action) These include:
    - o Art. 44 – Extradition
    - o Art. 46 – Mutual Legal Assistance
    - o Art. 48 – Law Enforcement Cooperation
    - o Art. 54 -- Mechanisms for recovery of property through international cooperation in confiscation
    - o Art. 55 – International Cooperation for Purposes of Confiscation

- Work together and intensify actions to fight corruption and ensure transparency in APEC, especially by means of cooperation and the exchange of information, to promote implementation strategies for existing anticorruption and transparency commitments adopted by our governments, and to coordinate work across all relevant groups within APEC (e.g., SOM, ABAC, CTI, IPEG, LSIF, and SMEWG).
- Coordinate, where appropriate, with other anticorruption and transparency initiatives including the UNCAC, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, FATF, the ADB/OECD Anticorruption Action Plan for the Asia Pacific region, and Inter-American Convention Against Corruption.
- Recommend closer APEC cooperation, where appropriate, with the OECD including a joint APEC-OECD seminar on anticorruption, and similarly to explore joint partnerships, seminars, and workshops with the UN, ADB, OAS, the World Bank, ASEAN, and The World Bank, and other appropriate multilateral intergovernmental organizations.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

- ***Promote regional cooperation on extradition, mutual legal assistance and the recovery and return of proceeds of corruption.***
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VI. OTHER APEC ACT LEADERS' AND MINISTERS' COMMITMENTS

LEADERS' AND MINISTERS' COMMITMENTS

- **2005:** Ministers encouraged all APEC member economies **to take all appropriate steps towards effective ratification and implementation, where appropriate, of the United Nations Convention against Corruption (UNCAC**). Ministers encouraged relevant APEC member economies to make the UNCAC a major priority. They urged all member economies to submit brief annual progress reports to the ACT Task Force on their APEC anti-corruption commitments, including a more concrete roadmap for accelerating the implementation and tracking progress. (See Section I Above, UNCAC)
- **2006**: Ministers underscored their commitment **to prosecute acts of corruption, especially high-level corruption by holders of public office and those who corrupt them.** In this regard, Ministers commended the results of the Workshop on Denial of Safe Haven: Asset Recovery and Extradition held in Shanghai in April 2006. Ministers agreed to consider developing domestic actions, in accordance with member economy's legislation, to deny safe haven to corrupt individuals and those who corrupt them and prevent them from gaining access to the fruits of their corrupt activities in the financial systems, including by implementing effective controls to deny access by corrupt officials to the international financial systems.
- **2007:** We endorsed a model **Code of Conduct for Business, a model Code of Conduct Principles for Public Officials and complementary Anti-Corruption Principles for the Private and Public Sectors.** We encouraged all economies **to implement these codes** and welcomed agreement by Australia, Chile and Viet Nam to pilot the Code of Conduct for Business in their small and medium enterprise (SME) sectors. (AELM, AMM)
- **2008:** We commended efforts undertaken by member economies to develop comprehensive anti-corruption strategies including efforts to restore public trust, ensure government and market integrity. We are also committed **to dismantle transnational illicit networks and protect our economies against abuse of our financial system by corrupt individuals and organized criminal groups through financial intelligence and law enforcement cooperation related to corrupt payments and illicit financial flows.** We agreed to further strengthen international cooperation to combat corruption and money laundering in accordance with the Financial Action Task Force standards. International legal cooperation is essential in the prevention, investigation, prosecution and punishment of serious corruption and financial crimes as well as the recovery and return of proceeds of corruption. (AELM, AMM)
- **2009:** We welcome the Anti-Corruption and Transparency Experts' Task Force's Singapore **Declaration on Combating Corruption, Strengthening Governance and Enhancing Institutional Integrity, as well as the APEC Guidelines on Enhancing Governance and Anti-Corruption**. We encourage economies **to implement measures** to give practical effect to the Declaration and Guidelines. (AMM)
- **2010:** We agreed to leverage collective action **to combat corruption** and illicit trade by promoting clean government, fostering market integrity, and strengthening relevant judicial and law enforcement systems. We agreed to deepen our cooperation, especially in regard to discussions on achieving more durable and balanced global growth, increasing capacity building activities in key areas such as combating corruption and bribery, denying safe haven to corrupt officials, strengthening asset recovery efforts, and enhancing transparency in both public and private sectors. We encourage member economies, where applicable, to **ratify the UN Convention against Corruption and UN Convention against Transnational Organized Crime and to take measures to implement their provisions, in accordance with economies legal frameworks to dismantle corrupt and illicit networks across the Asia Pacific region.** (AELM, AMM)

MALAYSIA

ECONOMY: Malaysia
CALENDAR YEAR: 2012
LAST UPDATED: February 2, 2012

LEADERS' AND MINISTERS' COMMITMENTS

- **2010**: We agreed to enhance our efforts to improve transparency and eliminate corruption, including through regular reporting via ACT and other relevant fora on economies' progress in meeting APEC Leaders' commitments on anti-corruption and transparency.
- **2006**: Ministers endorsed APEC 2006 key deliverables on Prosecuting Corruption, Strengthening Governance and Promoting Market Integrity and encouraged member economies to take actions to realize their commitments. Ministers also encouraged all economies to complete their progress reports on the implementation of ACT commitments by 2007. Ministers welcomed APEC efforts to conduct a stocktaking exercise of bilateral and regional arrangements on anti-corruption in cooperation with relevant international and regional organizations, and encouraged member economies to fully participate in the stocktaking activities.

Objective: Where appropriate, to self-assess progress against APEC Leaders' and Ministers' commitments on anti-corruption, transparency, and integrity and to identify capacity building needs to assist the ACT to identify priority areas for future cooperation.

EXECUTIVE SUMMARY

1. Summary of main achievements/progress in implementing the commitments of APEC Leaders and Ministers on anti-corruption, transparency, and integrity since 2004.

- 2004 – Formation of Institute of Integrity Malaysia (IIM). The main objective is to become the driver of the IIM and the implementing machinery of the National Integrity Plan (PIN) Malaysia towards building a resilient nation and appreciate and practice the values of integrity and ethics.

- 2007 - Malaysia Anti-Corruption Academy (MACA). The Academy is set up as the anti-corruption capacity and capability training center for officers of the Malaysian Anti-Corruption Commission as well as other Government departments and agencies and Government linked companies.

- 2009-Passing of Malaysian Anti-Corruption Commission Act 2009 (Act 694) by Parliament with the establishment of an independent Malaysian Anti-Corruption Commission (MACC) replacing the Anti-Corruption Agency Malaysia (ACA) as the lead agency to combat corruption, abuse of positions and related malpractices.

- Specific provision for criminalization of corrupt practices of foreign public officials in line with Article 16 of UNCAC is made law under Section 22 of the Malaysian Anti-Corruption Commission Act 2009. The transparency and integrity of the Malaysian Anti-Corruption Commission itself is enforced through the establishment of five independent bodies which act as oversight mechanism on the core activities (investigation, prevention and prosecution of corruption) and the conduct and discipline of its officers. The activities of the MACC are reported and tabled at the Parliamentary select committee for scrutiny on a quarterly basis.

- 2009- Passing of the Witness Protection 2009 (Act 696) – an act to establish witness protection programme

- 2009- PM's Directive No.1 of 2009- formation of integrity committees at all Federal ministries, State, District and Local Government- to ensure accountability and transparency in the government financial management and general administration through improvements in regulations, laws and procedures, code of conduct, work ethics.

- 2010- The setting up of the National Key Result Areas – Corruption Monitoring and Coordination Division under the MACC. This Division aims at fighting corruption in three areas, namely, grand corruption, government procurement, and regulatory and enforcement improvements. The achievements of this Division include implementation of the following measures:-
  (a) The passing of the Whistleblowers' Protection Act 2010 (Act 711)- an Act to safeguard the public sector employees or government officials from retribution for reporting corruption.
  (b) The setting up of 14 Special Corruption Sessions Courts to speed up trails and clear backlog cases of corruption offences
  (c) The curbing of use of support letters (issued by politicians) by individuals, companies or corporations bidding for government tenders
  (d) The inclusion of "Name & Shame" database published on the MACC website with the objective to create awareness and as a prevention measure to stop individuals from engaging in corrupt practices. It contains information on identity of corruption offenders (image, identity card numbers, offence and penalty imposed.
  (e) The MyProcurement portal – which is a centralized data center for government procurement by ministries and agencies which disclosed to the public information on the list of companies awarded tender and tender price.

(f) The requirement of having Compliance Unit in every Ministry, Government Department or Government Link Companies headed by a Certified Integrity Officer (CeIO) to ensure all action undertaken by them are based on laws, rules and regulations to eliminate chances of corrupt practices and to conduct integrity testing on their respective officers.
(g) The "hot-spot", "hot- staff " and "hot-job" rotation system or database - to take proactive steps to rotate staff who are too long and familiar with particular supplier or vendor , frontline dealing with customers and members of public seeking government services or regulatory requirements.

Other achievements:

• Anti-Corruption Principles for Corporations in Malaysia (2011)- developed through discussions of the Bursa Malaysia Berhad, Companies Commission Malaysia, Institute of Integrity Malaysia, Malaysian Anti-Corruption Commission, Securities Commission, Transparency International and the Performance Management and Delivery Unit (PEMAMDU) of the Prime Minister's Office. The Principles is being implemented through two mechanisms:-

(a) Implementation of the Corporate Integrity Pledge:
A tool to be used by companies themselves, on a voluntary basis, to improve the quality of their governance mechanisms and the level of integrity of their business operations. Companies can signal their commitments to:
a high standard of governance, transparency and accountability ; and contributing toward improving the business environment in Malaysia, to their investors and other stakeholders, by pledging to uphold the Anti-Corruption Principles Corporations in Malaysia

(b) The Integrity Pact in Government Procurement-which is declaration process by bidders for government contracts not to offer or given any bribes as a means to obtain contracts or to facilitate certain processes in Government Procurement.

2011 - Enforcement Agency Integrity Commission. In accordance with Act 700 at 1 April 2011 through Appointment Of Date Of Coming Into Operation Of The Enforcement Agency Integrity Commission Act 2009 [PU (B) 148/2011], the Commission was formally established.

2. Summary of forward work program to implement Leaders' and Ministers' commitments.

Political Funding reform

3. Summary of capacity building needs and opportunities that would accelerate/ strengthen the implementation of APEC Leaders' and Ministers' commitments by your economy and in the region.

I. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO UNCAC PROVISIONS

LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Take All Appropriate Steps Towards Ratification of, or Accession to, and Implementation of the UNCAC:

• Intensify our efforts to combat corruption and other unethical practices, strengthen a culture of transparency, ensure more efficient public management, and complete all appropriate steps to ratify or accede to, and implement the UNCAC.
• Develop training and capacity building efforts to help on the effective implementation of the UNCAC's provisions for fighting corruption.
• Work to strengthen international cooperation in preventing and combating corruption as called for in the UNCAC including extradition, mutual legal assistance, the recovery and return of proceeds of corruption.

I.A. Adopting Preventive Measures (Chapter II, Articles 5-13)

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RELEVANT UNCAC PROVISIONS

Chapter II, Articles 5-13

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

The Convention was signed on 9 September 2005 by Malaysia and ratified on 24 September 2008.

• Art. 5(2) Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

Malaysia's practices aimed at the prevention of corruption are carried out by multi-agency efforts which include as follows:

A. Enforcement practices

i. Enforcement of anti-corruption legislations outlined above are carried out by a central agency called the Malaysian Anti-Corruption Commission (or MACC) as well as the Royal Malaysian Police Department. Sub-section 7 (a) and (b) of the Malaysian Anti-Corruption Commission Act 2009 (Act 694) referred.
ii. Offences under Sections 131,132 and 135 the Companies Act 1965 (Act 125) in reference to conflict of interest are enforced by officers of the Companies Commission of Malaysia.
iii. Offences of corruption under Section 137 of the Customs Act 1967 (Act 235) are enforced by the the Customs Department as well as the Malaysian Anti-Corruption Commission.
iv. Serious offences of corruption under the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 are enforced by the Malaysian Anti-Corruption Commission.

B.Preventive practices:

i. MACC inspection and consultation efforts
These are carried out by the MACC's Inspection and Consultation Division as empowered under sub-sections 7 (c)(d) and (e) of the Malaysian Anti-Corruption Commission Act 2009 (Act 694) . These section of the law empowers the MACC to examine the practices, systems and procedures of public bodies..

ii. National Key Result Area (NKRA) Corruption Monitoring and Coordination Unit.
This Unit which was set up by the Prime Minister's Office in 2009 to spearhead the Government Transformation Programme (GTP) in enhancing anti-corruption efforts in three key corruption areas namely, regulatory & enforcement agencies, government procurement and grand corruption which includes political corruption. In 2012 this Unit was emplaced under the MACC for purpose of administration and co-ordination of anti-corruption efforts mentioned.

iii. Committee for Government Administration on Integrity & Governance
The PM's Directive No.1 of 2009 entitled "An Initiative to Consolidate the Integrity Management System of Malaysian Government Administration" The objective of this Directive is to enhance the management of the Malaysian Government Administration. The mechanism for implementation is through the establishment of Committee Integrity Governance (CIG) at the Federal and State levels to further strengthen the Management Integrity Committee that was initiated since 1998.

iv. PEMANDU
The acronym of "Performance Management & Delivery Unit" is a unit under the Prime Minister's Department. It main role is oversee the implementation, asess the progress, facilitate as well as support the delivery and drives the progress of the Government Transformation Programme and the Economic Transformation Programme.

v. PEMUDAH - The Special Task Force for Facilitate Business
The said Task Force dubbed "PEMUDAH" (taken from the Malay name 'Pasukan Petugas Khas Pemudahcara Perniagaan') is set up to address bureaucracy in business-government dealings by improving the way government regulates business.
C. Education and community relations practices

i. MACC Efforts
The MACC's Community Education Division is tasked to (a) educate the public against corruption and (b) to enlist and foster public support against corruption. These efforts are carried out through the giving of live talk shows, dialogues, lectures, seminars, debates, and workshops on anti-corruption.

D. Other Instituitonal Efforts

i. Malaysia Anti-Corruption Academy (MACA) Efforts
The Academy is set up as the anti-corruption capacity and capability training center for officers of the Malaysian Anti-Corruption Commission as well as other Government departments, Government linked companies and paticipants from oversea.

ii. Insitutute of Integrity Malaysia (IIM)
• Malaysian Prime Minister, Dato' Seri Abdullah Haji Ahmad Badwi has on April 23, 2004. The main objective is to become the driver of the IIM and the implementing machinery of the National Integrity Plan (PIN) Malaysia towards building a

resilient nation and appreciate and practice the values of integrity and ethics.

- Art. 7(1). Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

(a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;

A. Hiring

- Application/Selection/Short-Listing of Candidates based on merit points/ Candidates undergo interview- Board of interview are made up of a representative of the civil service commissions and a representative of the Ministry/Department/ Agency hiring.

B. Appointment/Confirmation

- (i) under go Induction / Mind Transformation Course (ii) obtain a pass for the Public Service Examination (iii) obtain a pass for Departmental Examination and (iii) before officially appointed, undergo vetting* by the Police Force (for criminal records), the National Anti-Drug Agency (for drug abuse) and Department of Insolvency (for bankruptcy)

C. PROMOTION

- Criteria for promotion has been set

D. RETIREMENT/PENSION BENEFITS- Regulations under the Pensions Act 1980 (Act 227)

(b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;

A. Procedure for selection for public positions considered vulnerable to corruption

Malaysia does not have a specific procedure on the selection of personnel on this aspect. However Malaysia has a generic procedure under Regulation 19 of the Public Officers' (Appointment, Promotion and Termination of Service) Regulations 2005 and Service Circular No. 7 of 2010 : Guidelines on Management of Acting and Promotion in Public Service which stipulates that candidates must satisfy the following conditions:-

B. Procedure for training of such individuals

Malaysia does not have a specific procedure in this aspect but a uniform government directive for the training of all categories of public officials (of the Federal Ministries and Prime Minister's Department) which is embodied in the Service Circular No.6 of 2005 which stipulates that public officials are required undergo a minimum of 7 days of courses per year.

In addition to the above, syllabuses for public services examinations also include an understanding of the Malaysian Anti-Corruption Act 2009.

C. Procedure for rotation of such individuals to other positions.

Till date there is no specific procedure of rotation/placement of public officials in positions vulnerable to corruption. However all public officials of Government of Malaysia are subjected for transfer based on Service Circular No 3 of 2004.

Steps to impose job rotation for all "hot job" - engage directly with customers during the processing of an application that can generate financial returns or any other form of rewards; directly involved with the client when enforcing the law; required to carry out tasks for payment or collection of revenue from customers; and make decisions based on consideration of discretionary powers whether a customer is eligible or ineligible for something or has/does not violate any regulations or laws; public official working at "hot-spot" -referring to the location of work which are more prone to corruption (for instance entry / exit points or border stations) and those identified as "hot staff"- i.e. an officer or staff at risk usually those who are under court order or disciplinary action by the government agency have been recently (in 2011) been recommended by the NKRA Corruption Monitoring and Coordination Division at the Public Delivery Task Force chaired by the Deputy Prime Minister. As a result of the Delivery Task Force meeting all heads of department have taken steps to implement job rotation based upon the recommendation of the NKRA Corruption Monitoring and Coordination Division. Till date there is no written directive (in the form of service circular) being issued by the Government on this matter.

E.g. of implementation Currently the Customs Department of Malaysia has taken proactive steps and make more credible job rotation supported by computer system. The Customs Department has developed an e-placement system using internal resources to prevent "hot staff" from being placed at "hot-spot" or "hot-job" positions.

(c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;

The remuneration of the Malaysian civil service is currently (as of 1 Nov 2002) based on the provisions of The Government of His Majesty Malaysia Service Circular No.4 of 2002 : Malaysian Remuneration Sytem (Kerajaan Seri Paduka Baginda Malaysia Pekeliling Perkhidmatan Bilangan 4 Tahun 2002). The basic features of the said circular are as follows:

- i) Remuneration and equitable pay scales, ii) Pension and iii) Retirement Benefit

(d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.

A. Education and training programmes on anti-corruption :

In the Malaysia such educational and training programmers are being handled by the Malaysian Anti-Corruption Commission's (MACC) Education and Community Relations Division and the Examination and Consultation Division, the Malaysia Anti-Corruption Academy (MACA) and the Malaysia Institute of Integrity (IIM) for public officials such as (a) seminars, lectures, dialogues, workshops etc. on corruption and implementation of Accountability and Integrity Management Systems (SPAI, in Malay); (b) specialized courses on the detection, prevention , investigation and prosecution of corruption and corruption risks management; anti-corruption plan/mechanism for departments; management of code of ethics; forensic accounting etc.

Further in a recent initiative promulgated under the Prime Minister's Directive No.1 of 2011 it is required that all Government departments and agencies are to establish certified integrity officer programme for the purpose of having a certified integrity officer to be deployed in their respective departments or agencies.

- ***Art. 7(4). Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.***

A. Prevention of conflict of interest in the Public Sector:

Legislation/Regulations:

- **Regulation 4 (2) of Public Officers (Conduct and Discipline) Regulations 1993**
- **Sec 23 of the Malaysian Anti-Corruption Commission Act 2009 (Act 694)-Offence of using office or position for gratification:-**
- **Transparency in Public Procurment is promoted through the following measures:**

1. Treasury Instructions(TI) and Treasury Circulars:- which determined the procedures for procurement of supplies, services and works based on the principles of fairness and best value for money besides promotion of local industries, transfer of technology, sustainability in supply of good and services to meet the Government needs from the best and reliable sources, and achieving National Development Goals-

Any officer who have vested interest in the Quotation/Tender are required to declare his/her interest and to dismiss himself/herself in writing. (TI No.197.3)

Public procurment of works -
a. Requisiion -Works not exceeding RM100,000 (TI No.180)
b. Direct appointment of contractor- Works not exceeding RM20,000 (para (b) TI No.180.1)
c. Direct appointment on rotation basis of contractor- Works between RM 20,000- RM 100,000)(para (c) TI 180.1)
d. calling for tender for works exceeding RM 500,000 (TI No.181 and TI No.172)

Public procurment of services through negotiation-TI No.185 are carried out by the Treasury and the Tender Board designated as Tender Board "A" (for services more than RM 20 millin) or Tender Board "B" (for services upto RM20 million). Members of the Board are appointed the Minister of Fiance (for Federal projects) or the Heads of States or the Chief Minister (for State projects)

2. Initiatives of the National Key Result Area Corruption Monitoring and Coordination Division which include:-

i. Implementation of Myprocurement and Mypartnership portal to ensure transparency in public procurement
ii. Defining parameters of support letters to deter undue influence by individuals on decision-making process of public officials in procurement
process
iii. Training for procurement officers
iv. Implementation of Integrity Pact tool- a formal agreement between contractors/ suppliers and the Government to abstain from corruption
activities as required by Ministry of Finance Treasury Circular No .10.of 2010
v. Demarcation between procurement and Privatisation/Public Private Partnership
vi. Reviewing the Procurment Price Negotiation
vii. Enhance technical capability and costs committee at every ministry and agencies

• ***Art. 8(2). In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.***

Since 1980s, programmes focusing on attitudinal and value changes were introduced, including the following:

• Punch Clock system/ Wearing of name tags/Code of Ethics in the Public Service/ Look East Policy/ Clean, Efficient and Trustworthy Campaign/ Leadership by Example/ Inculcation of Islamic Values in Public Administration/ Manual of Office Procedure and Desk File/Quality counter services/Quality telephone service/ Procedures on office correspondence and management of meetings; and Open office concept

The Malaysian Public Service Commitment 2008 . In essence the Malaysian Public Service is geared towards ONE SERVICE, ONE DELIVERY, NO WRONG DOOR
In April 2009, the Prime Minister Datuk Seri Najib Tun Razak introduced the Government Transformation Programme (GTP) with two main objectives, i) effective in its service delivery and be accountable for outcomes that matter most to the rakyat and ii) concept of "People First, Performance Now".

• ***Art. 8(5). Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.***

Compliance with this Article by Malaysia is implemented throught the following measures:

1. Regulation 19 (c) of the General Orders –Chapter A:Execution of Letter of Undertaking:

2. Relevant regulations of the Public Officers (Conduct and Discipline) Regulations 1993 as regards Letter of Undertaking:

• Regulation 5 -Outside employment
• Public officer is required under Paragraph 25 of The Government of His Majesty Malaysia Service Circular No.3 of 2002-Ownership and Declaration of Property by Public Officer (Kerajaan Seri Panduka Baginda Malaysia Bilangan 3 Tahun 2002: Pemilikan dan Perisytiharan Harta Oleh Pegawai Awam, in the National Language) to declare business enterprises owned by his family members.

• Regulation 8 – Presents - The Government of His Majesty Malaysia Service Circular No.3 of 1998: Guidelines on Receiving and Giving of Gifts in Public Service (Kerajaan Seri Paduka Baginda Malaysia Pekeliling Perkhidmatan Bilangan 3 Tahun 1998, in the National Language)

• Regulation 10-Ownership of property - The Government of His Majesty Malaysia Service Circular No.3 of 2002-Ownership and Declaration of Property by Public Officer (Kerajaan Seri Panduka Baginda Malaysia Bilangan 3 Tahun 2002: Pemilikan dan Perisytiharan Harta Oleh Pegawai Awam, in the National Language):-
A Public officer (but not his family members)is not permitted:-
i. to hold licence of:a) business vehicle; b) public service vehicle; c) entertainment business ; or
ii. apply and own government land for the purpose of logging and mining.

• Regulation 11-Maintaining a standard of living beyong emoluments and legitimate private means.
• Regulation 16 of the Public Officers (Conduct and Discipline)Regulations 1993:

No officer shall involve himself as a buyer or seller or otherwise in any local or foreign futures market.

a) b.Paragraph 23 of The Government of His Majesty Malaysia Service Circular No.3 of 2002-Ownership and Declaration of Property by Public Officer (Kerajaan Seri Panduka Baginda Malaysia Bilangan 3 Tahun 2002: Pemilikan dan Perisytiharan Harta Oleh Pegawai Awam, in the National Language):-
An officer is allowed to buy shares subject to the following conditions:

i. not more than 5% of paid up capital or RM10,000 at current value, which ever is the lower at each incorporated company in the National Languagesia;
ii. (ii) not more than 5% of paid up capital in every capitalization of companies and enterprises established by the Government of Malaysia
iii. not more than the limit determined by the Government for every Unit Trusts sponsored by the Government,

Sanction in violation of the Public Officers (Conduct and Discipline)Regulations 1993:
Regulation 38 of the Public Officers (Conduct and Discipline) Regulations 1993 provides for the types of disciplinary punishments:

If an officer is found guilty of a disciplinary offence, any one or any combination of

tow or more of the following punishments, depending upon the seriousness of the offence , may be imposed on the officer:-
(a) warining; (b) fine; (c) forfeiture of emoluments; (d) deferment of salary movement; (e) reduction of salary; (f) reduction in rank; or (g) dismissal.

3. Violation of Section 23 of the Malaysian Anti-Corruption Act 2009 (Act 694)- Offence of using office or position for gratification

23. Offence of using office or position for gratification

10(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities;

In February 2007 there was a notable development in the public-private sector partnership consultative mechanism. The Government announced the establishment of the Special Task Force to Facilitate Business or PEMUDAH as it is now known to carry the spirit of Malaysia Incorporated, to a much higher level than in the past. PEMUDAH has two working groups on: (i) Efficiency related issues; and (ii) Policy issues to look into the efficiency of the public delivery system and government policies impacting business respectively. These working groups are in turn supported by various task forces looking into specific issues which require focused attention.

Pemudah has managed to resolved the following : Some Example
A. Home Ministry matters:
- Issuing new passport within an hour or a day
- Processing expatriate employment pass application within seven days

B. Tax and stamp duty assessment:
- Cutting time to refund excess taxes from a year to between 14 and 30 days for e-filing submission
- Refunding excess taxes for current year without referring to previous years' assessments

C. Land:
- Reducing time taken to process land management and tackling approval backlogs; and
- Amending 47 provisions under the National Land Code for better land management

- ***Art. 12(2). Measures to achieve these ends may include, inter alia:***

(a) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

Malaysia fulfills the provision of Article 12 (2) through the following measures:

1. Formulation of The Malaysian Code of Business Ethic and the Malaysian Code of Corporate Governance.

In Malaysia, the financial crisis in 1997 led to the setting up of a High Level Finance committee a year later. This led to the formulation of the Malaysian Code of Corporate Governance [MCCG] in 2000 which is being replaced by MCCCG 2011.
In 2002, the Ministry of Domestic Trade and Consumer Affairs introduced a Code Of Business Ethics known as Rukuniaga Malaysia which has been adopted by many companies as a guide for their business operations. The code outlines six principles for conducting business:
- Honesty in doing business;
- Responsibility to clients, society and environment;
- Being humane to all;
- Fairness to clients
- Determination to succeed in business.

2. Private Entity Reporting Standards (PERS), is a set of accounting standards issued or adopted by Malaysian Accounting Standards Board (MASB) for application by all private entities in Malaysia.
3. The implementation of Integrity Pact agreements for all Government Procurement

i. The Treasury Instruction Letter dated 1 April 2010 only addresses bidders' conduct in Government Procurement process. The Ministry of Finance has also incorporated the Integrity Pact element in the registration process of suppliers/firms which require the companies to sign a declaration form that has clauses on corruption upon application of registration with the Ministry of Finance. These guidelines are to ensure a broader and comprehensive coverage on the conduct of the parties involved in the Government Procurement processes.

4. Embodying Conflict of interest provisions in the Companies Act 1965(Act 125) as follows:-
- ***130. Power to restrain certain persons from managing companies***
- ***130A. Disqualification of directors of insolvent companies***
- ***131. Disclosure of interests in contracts, property, offices, etc.***
- ***132. As to the duty and liability of officers***
- ***132A. Dealings by officers in securities***

132B. Prohibition on abuse of information obtained in official capacity
132D. Approval of company required for issue of shares by directors
132E. Substantial property transactions involving directors
132F. Exception and definition
132G. Prohibited transaction involving shareholders and directors
133. Loans to directors
133A. Prohibition of loans to persons connected with directors

3. Embodying Conflict of Interest provisions under Section 23 of the Malaysian Anti-Corruption Act 2009 as follows:

23. Offence of using office or position for gratification
*Definition of "public body" under Section 3 of Malaysian Anti-Corruption Act 2009

(b) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;

In Malaysia the law recognizes that a company is a separate legal entity distinct from its shareholders. Therefore the courts usually do not look behind "the veil" to inquire why the company was formed or who really controls it. However there are certain exceptions described as "lifting the veil of incorporation".

- ***Art. 13(1). Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:***

(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;

Malaysia does not promote active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations in the decision-making processes of the Government.

(b) Ensuring that the public has effective access to information;

Malaysia does not promote active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organization to ensure that the public has access to information.

Malaysia's measure to comply with the provision of this Article is done through public-private consultation as follows:

The Setting up of PEMUDAH - On 7th February 2007, the Special Taskforce to Facilitate Business or PEMUDAH (taken from the taskforce's Malay name 'Pasukan Petugas Khas Pemudahcara Perniagaan') was established. Reporting directly to the Prime Minister, the team comprises 23 highly respected individuals from both the private and public sectors. It is co-chaired by the Chief Secretary to the Government of Malaysia and the Immediate Past President of the Federation of Malaysian Manufacturers.

(c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;

In Malaysia, active participation of society in the area of public information activities that contribute to non-tolerance of corruption is carried out by Transparency International –Malaysian Chapter.

The core activities of Transparency International –Malaysian Chapter are as follows:

1. Integrity Pact (IP) : START DATE – September 2009
2. Forest Governance Integrity (FGI) Programme : START DATE – March 2009
3. Reform of Political Financing (PF) : START DATE – June 2009
4. Freedom of Information (FOI) : START DATE – 2009

(d) Respecting, promoting, and protecting the freedom to seek, receive, publish, and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:

(i) For respect of the rights or reputations of others;
(ii) For the protection of national security or order public or of public health or morals.

There is no restriction to seek and receive information concerning corruption in Malaysia but publishing and dissemination of information concerning corruption are subject to specific restriction once such information are received by the Malaysian Anti-Corruption Commission:

Reports on corruption offences made members of the public to the MACC are kept secret by the MACC UNTIL the accused is charged in court as provided for under Sec-

tion 29 (4) of the Malaysian Anti-Corruption Commission Act 2009 (Act 694)..

Disclosure of Information by the MACC-The Name and Shame Database - As of 4th March 2010, in effort to stop further involvement in corruption practices by persons already charged and convicted for corruption, the Malaysian Anti-Corruption Commission under the auspices of the National Key Result Area Corruption Monitoring and Coordination Divison, has been authorized to published web site www.sprm.my the "Name & Shame" Data base which contains information on corruption offenders including image, identity card numbers, details of offence(s) and the penalty imposed. The information will remain on the website for three years.

B. Criminalization and Law Enforcement (Chapter III)

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RELEVANT UNCAC PROVISIONS

See below.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

- ***Art 15. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:***

(a)The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

The Malaysian Legislation in compliance with subparagraph (a) Article 15 UNCAC is as follows:
1. Section 16 (b) of the Malaysian Anti-Corruption Commission Act 2009 (Act 694)
2. Section 17(b) of the Malaysian Anti-Corruption Commission Act 2009 (Act 694)
3. Section 21 of the Malaysian Anti-Corruption Commission Act 2009 (Act 694)- Bribery of officer of public body
4. Section 214 Penal Code (Act 574) -Offering gift or restoration of property in consideration of screening offender
5. Section 137 of the Customs Act 1967 (Act 235)

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

The Malaysian legislation in compliance with subparagraph (b) of Article 15 is as follows:

1. Section 16 (a) of the Malaysian Anti-Corruption Commission Act 2009 (Act 694)
2. Section 17 (a) of the Malaysian Anti-Corruption Commission Act 2009 (Act 694)- Offence of giving or accepting gratification by agent
3. Section 21 of the Malaysian Anti-Corruption Commission Act 2009 (Act 694)
4. Section 161 Penal Code - Public servant taking a gratification other than legal remuneration in respect of an official act.
5. Section 162 Penal Code -Taking a gratification in order, by corrupt or illegal means, to influence a public servant.
6. Section 163 Penal Code - Taking a gratification in order, by corrupt or illegal means, to influence a public servant
7. Section 165 Penal Code - Public servant obtaining any valuable thing without consideration form a person concerned in any proceeding or business transacted by such public servant
8. Section 215 Penal Code - Taking gift to help recover stolen property
9. Section 137 Customs Act 1967 (Act 235)

- ***Art. 16 (1). Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally,the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.***

The Malaysian Legislation in compliance with paragraph 1 of Article 16 UNCAC is as follows:
1. Section 22 - Bribery of foreign public officials

- ***Art. 17 Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.***

The Malaysian domestic laws in relation to implementation of Article 17 of UNCAC are as follows:

1. Section 18 of the Malaysian Anti-Corruption Commission Act 2009 (Act 694)- Offence of intending to deceive principal by agent

2. Offences of the Penal Code (Act 574) as follows:-
   - Section 379-Theft
   - Section 403-Dishonest misappropriation of movable property, or converting it to one's own use
   - Section 404 - Dishonest misappropriation of property possessed by a deceased person at time of his death
   - Section 405- Criminal breach of trust
   - Section 406 - Punishment of criminal breach of trust
   - Section 409 - Criminal breach of trust by public servant or agent
   - Section 409A - Defence not available
   - Section 409B – Presumption
   - Section 417-Cheating
   - Section 418-Cheating with knowledge that wrongful loss may be thereby cuased to person whose interest the offender is bound to protect
   - Section 420-Cheating and dishonestly inducing delivery of property
   - Section 463/465- Forgery
   - Section 467-Forgery of valuabale security
   - Section 468- Forgery for the purpose of cheating
   - Section 471- Using as genuine a forged document
   - Section 472- Making or possessing a counterfeit seal, plate, etc. with intent to commit a forgery punishable under Section 467
   - Section 473- Making or possessing a counterfiet seal, plate, etc., with intent to commit a forgery otherwise
   - Section 474- Having possession of valuable security or will known to be forged, with intent to use it as genuine
   - Section 475- Counterfeiting a device or mark used for authenticating documents described in Section 467, or possessing counterfeit marked material
   - Section 476- Counterfeiting a device or mark used for authenticating documents other than those described in Section 467, or possessing counterfeit marked material
   - Section 477A- Falsification of accounts

- ***Art. 20. Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.***

Malaysia's legislative measure in compliance with Article 20 of UNCAC is provided under Section 36 (3) of the Malaysian Anti-Corruption Commission Act 2009 (Act 694) - which states as follows:

- Section 36 - Powers to obtain information

- ***Art. 21 measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:***

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

The Malaysian legislation in relation to the implementation of Article 21 of UNCAC are as follows:

The Malaysian Anti-Corruption Commission Act 2009 (Act 694) and the Penal Code (Act 574) do not have the term "undue advantage" in its scope but the term "gratification" instead.

"Gratification" is defined is defined under Section 3 of the Malaysian Anti-Corruption Commission Act 2009 (Act 694) as follows:
conditional or unconditional, of any gratification within the meaning of any of the preceding paragraphs (a) to (f).

The term "gratification" in the Penal Code (Act 574) on the other hand " is not restricted to pecuniary gratifications, or gratifications estimable in money. t is submitted that the definition of "gratification "comes within the scope of the intepretation of the term "undue advantage". See paragraph 196 and 197 of the Legislative Guide fot the Implementation of UNCAC.

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

The Malaysian Legislation in relation to the implementation of subparagraph (b) of Article 21 UNCAC are as follows:

• Section 16 (a) of the Malaysian Anti-Corruption Commission Act 2009 (Act 694)
• Section 17 (a) of the Malaysian Anti-Corruption Commission Act 2009 (Act 694)- Offence in giving or accepting gratification by agent.
• Section 20 (b) of the Malaysian Anti-Corruption Commission Act 2009 (694)- Corruptly Procuring Withdrawal of Tender

• ***Art. 27(1). Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.***

Malaysia's legislation in relation to implementation of paragraph 1 of Article 27 are as follows:
• Section 4 (1) ANTI-MONEY LAUNDERING AND ANTI-TERRORISM FINANCING ACT 2001 (Act 613)
• Section 16 of the Malaysian Anti-Corruption Commission Act 2009 (Act 694)
• Section 22 of the Malaysian Anti-Corruption Commission Act 2009 (Act 694)
• Section 28 of the Malaysian Anti-Corruption Commission Act 2009 (Act 694)
• Section 137 of the Customs Act 1967 (Act 235)
• PENAL CODE (Act 574) provisions as follows:.
• Section 34- Each of several persons liable for an act done by all, in like manner as if done by him alone
• Section 35- When such an act is criminal by reason of its being done with a criminal knowledge or intention
• Section 37- Co-operation by doing one of several acts constituting an offence
• Section 38- Several persons engaged in the commission of a criminal act, may be guilty of different offences
• Section 107 - Abetment of a thing
• Section 108 – Abettor
• Section 108A- Abetment of offences outside Malaysia
• Section 109- Punishment of abetment if the act abetted is committed in consequence, and where no express provision is made for its punishment
• Section 110- Punishment of abetment if the person abetted does the act with a different intention from that of the abettor
• Section 116 -Abetment of an offence punishable with imprisonment
• Section 118 . Concealing a design to commit an offence punishable with death or imprisonment for life
• 120A. Definition of criminal conspiracy
• 120B.Punishment of criminal conspiracy
• Section 164- Abetment of offences under Section 162 and Section 163 Penal Code

I.C. Preventing Money-Laundering

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RELEVANT UNCAC PROVISIONS

See below.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

• ***Art. 14(1). Each State Party shall:***

(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;

The Malaysian finance system is strutured into two major categories : (a) Financial Institutions and (b) Financial Market. Financial Institutions comprises of Bank System and Non-bank Financial intermediaries. Financial Market in Malaysia comprises of four major markets namely: Money & foreign Exchange Market, Capital Market and Offshore Market.
(b) Without prejudice to article 46 of this Convention, ensure that administrative, regula-

tory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

Part III Sections 7, 8, 9, 10, 11, and 12 of the Anti-Money Laundering and Anti Terrorism Financing Act 2009 provide for the establishment function and powers of the Financial Intelligent Unit whihch was setup on 8th August 2001.

- ***Art. 14(2). States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.***

Malaysian legistative measure to comply with this provision is under Section 23 of the Anti-Money Laundering and Anti-Terrorism Financial Act 2001 and Anti-Money Laundering and Anti-Terrorism Financial Act 2001 (Cash and Negotiable Bearer Instruments Declaration) Order 2009

- ***Art. 14(3). States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:***

(a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;

(b) To maintain such information throughout the payment chain; and

(c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

Malaysia fulfills the provisions of this Article under the Electronic Commerce Act 2006 (Act 658) ; Electronic Government Activities Act 2007 (Act 680); Digital Signature Act 1997 (Act 562); Payment Systems Act 2003 ; Section 119 Banking and Financial Institutions Act 1989 (Act 372); and Sections 13, 14, 15, 16, and 17 of the Anti-Money Laundering and Anti Terrorism Financing Act 2009 which provide for reporting obligations by reporting institutions as well as Central of Malaysia (Bank Negara Malaysia) Sectoral Guidelines.

II. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO APEC INEGRITY STANDARDS (CROSS CHECK WITH I.A. ABOVE)

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LEADERS' AND MINISTERS' COMMITMENTS

See below.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Santiago Commitment/COA: Strengthen Measures to Effectively Prevent and Fight Corruption and Ensure Transparency by Recommending and Assisting Member Economies to:

- ***Establish objective and transparent criteria that assure openness for merit, equity, efficiency for the recruitment of civil servants, and promote the highest levels of competence and integrity;***

See response above (I.A.).

- ***Adopt all necessary measures to enhance the transparency of public administration, particularly with regard to organization, functioning and decision-making processes;***

See response above (I.A.).

- ***Develop and implement appropriate public financial disclosure mechanisms or codes of conduct for senior-level public officials [SOM III: Guidelines];***

See response above (I.A.).

III. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO SAFE HAVENS (CROSS CHECK WITH I.C. ABOVE):

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LEADERS' AND MINISTERS' COMMITMENTS

See below.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Santiago Commitment/COA: Deny safe haven to officials and individuals guilty of public corruption, those who corrupt them, and their assets:

- ***Promote cooperation among financial intelligence units of APEC members including, where appropriate, through existing institutional mechanisms.***

In line with the Government's efforts to combat money laundering outside of the country, Malaysia became a member of the Asia Pacific Group on Money Laundering (APGML) on 31 May 2000.

- ***Encourage each economy to promulgate rules to deny entry and safe haven, when appropriate, to Officials and individuals guilty of public corruption, those who corrupt them, and their assets.***

Denial of Entry

There is no specific legislation in Malaysia to deny entry of officials and individuals found guilty of corruption and those who corrupt them. However under Section 8 (1) (d) of the Immigration Act 1959/63 (Act 155) a corrupt official and individual who corrupt them are considered a "prohibited immigrants" being any person who-
(i) has been convicted in any country or state of any offence and sentenced for any term, and has not received a free pardon; and
(ii) by reason of the circumstances connected with the conviction is deemed by the Director General to be an undesirable immigrant.

Or, as provided for under Section 14 (4) of Act 155, where any person has entered Malaysia by virtue of a Permit or Certificate, and the Director General is satisfied

- ***Implement, as appropriate, the revised Financial Action Task Force (FATF) 40 Recommendations and FATF's Special Recommendations (Santiago Course of Action)***

Malaysia being a member of the APGML uses the FATF's 40 Recommendation and 9 Special Recommendations as its principal guidelines for the implementation of effective AML/CFT standards and measures.

- ***Work cooperatively to investigate and prosecute corruption offenses and to trace freeze, and recover the proceeds of corruption (Santiago Course of Action)***

Malaysia has made and reciprocated MLA request with APEC economies like Singapore, Hong Kong, Thailand, Brunei Darussalam, Australia and Japan using provisions its own domestic laws (namely, the Mutual Assistance in Criminal Matters Act, the Extradition Treaty Act) and Bilateral / Multilateral Treaties /MoUs rather than UNCAC or FATF mechanisms.

Type of MLA Request	Requesting State
Investigation e.g. taking of evidence, including testimony, documents, records and items by way of judicial process ; search and seizure,	Singapore, Hong Kong, Thailand, Brunei Darussalam , Japan, Australia, United States, Timor Leste,
Joint Investigation Team	Brunei Darussalam
Extradition / Summons and Warrants)	Singapore, Brunei Darussalam, Thailand, Indonesia, Hong Kong, Australia, US, Russia
Others- MoU (Bilateral/ Multilateral) with APEC member countries on training	Thailand, Vietnam, Brunei Darussalam, Indonesia, Hong Kong, Philippines, Singapore,

- ***Implement relevant provisions of UNCAC. These include:***
  - ***Art. 14 (Money laundering)***

Malaysian Anti Money Laundering Act (AMLA) was passed in 2001 and came into force

in January 2002. It was amended in 2003 to include measures to combat against terrorism financing. Following the amendment, AMLA was renamed Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (AMLATFA).

o ***Art. 23 (Laundering of Proceeds of Crime)***

4. Offence of money laundering
3. Interpretation

o ***Art. 31 (Freezing, seizure and confiscation)***

44. Freezing of property
45. Seizure of movable property

46. Further provisions relating to seizure of movable property
50. Seizure of movable property in financial institution
51. Seizure of immovable property
52. Special provisions relating to seizure of a business

o ***Art. 40 (Bank Secrecy)***

48. Investigation powers in relation to a financial institution

o ***Chapter V (Asset Recovery)***

49. Public Prosecutor's powers to obtain information
55. Forfeiture of property upon prosecution for an offence
56. Forfeiture of property where there is no prosecution
59. Pecuniary orders

IV. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO PRIVATE SECTOR CORRUPTION:

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LEADERS' AND MINISTERS' COMMITMENTS

See below.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Santiago Commitment/COA: Fight both Public and Private Sector Corruption:

- ***Develop effective actions to fight all forms of bribery, taking into account the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or other relevant anticorruption conventions or initiatives.***

Malaysia has made bribery of foreign public officials an offence under Sec. 22 of the MACCA 2009.
Sec. 22 Bribery of foreign public official.
Sec. 66 Liability for offences outside Malaysia

- ***Adopt and encourage measures to prevent corruption by improving accounting, inspecting, and auditing standards in both the public and private sectors in accordance with provisions of the UNCAC.***

IMPROVING FINANCIAL MANAGEMENT IN THE PUBLIC SERVICE

- Strengthening Financial Management - The Public Service has established the Internal Audit Unit (IAU) as part of its efforts to strengthen internal control in government agencies. Since 2001, a total 31 ministries and department have set up IAUs.
- Strengthening the External Audit Function - Several improvements have been introduced to enhance the quality of audit work in accordance with the Audit Act 1957 and in response to the demand of the changing environment.

V. ENHANCING REGIONAL COOPERATION

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LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Strengthen Cooperation Among APEC Member Economies to Combat Corruption and Ensure Transparency in the Region:

- Promote regional cooperation on extradition, mutual legal assistance and the recovery and return of proceeds of corruption.
- Afford one another the widest measure of mutual legal assistance, in investigations, prosecutions, and judicial proceedings related to corruption and other offences covered by the UNCAC.
- Designate appropriate authorities in each economy, with comparable powers on fighting corruption, to include cooperation among judicial and law enforcement agencies and seek to establish a functioning regional network of such authorities.
- Sign bilateral and multilateral agreements that will provide for assistance and cooperation in areas covered by the UNCAC. (Santiago Course of Action) These include:
  - Art. 44 – Extradition
  - Art. 46 – Mutual Legal Assistance
  - Art. 48 – Law Enforcement Cooperation
  - Art. 54 -- Mechanisms for recovery of property through international cooperation in confiscation
  - Art. 55 – International Cooperation for Purposes of Confiscation
- Work together and intensify actions to fight corruption and ensure transparency in APEC, especially by means of cooperation and the exchange of information, to promote implementation strategies for existing anticorruption and transparency commitments adopted by our governments, and to coordinate work across all relevant groups within APEC (e.g., SOM, ABAC, CTI, IPEG, LSIF, and SMEWG).
- Coordinate, where appropriate, with other anticorruption and transparency initiatives including the UNCAC, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, FATF, the ADB/OECD Anticorruption Action Plan for the Asia Pacific region, and Inter-American Convention Against Corruption.
- Recommend closer APEC cooperation, where appropriate, with the OECD including a joint APEC-OECD seminar on anticorruption, and similarly to explore joint partnerships, seminars, and workshops with the UN, ADB, OAS, the World Bank, ASEAN, and The World Bank, and other appropriate multilateral intergovernmental organizations.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

A. Malaysia's commitment in international cooperation to combat corruption is by having in place the following legislation:-

1. Mutual Assistance in Criminal Matters Act 2002 (Act 621)- an Act to make provisions for mutual assistance in criminal matters between Malaysia and other countries and for matters connected therewith.

2. Extradition Act 1992 (Act 479)- an Act relating to the extradition of fugitive criminals. Under the Act, "Extradition Offence" is an offence, however described, including fiscal offences-(a) which is punishable, under the laws of a country with imprisonment for not less than one year or with death and (b) which, if committed within the jurisdiction of Malaysia, is punishable under the laws of Malaysia with imprisonment for not less than one year or with death.

B. The Malaysian Anti-Corruption Commission (MACC) International Initiatives:

The Malaysian Anti-Corruption Commission joins anti-corruption initiatives as follows:

1. Interpol Group of Experts on Corruption (IGEC)

The INTERPOL Group of Experts on Corruption (IGEC), an outgrowth of the first International Conference on Corruption-related Crime, held at the INTERPOL General Secretariat in Lyon in April 1998, has been mandated by the INTERPOL General Assembly to develop and implement various new anti-corruption initiatives to further law enforcement's efficiency in the fight against corruption.

The Malaysian Anti-Corruption Commission is represented by Dato' Seri Abu Kassim bin Mohamed, the then Deputy Director General I of Anti-Corruption Agency Malaysia as a member to the group since its inception.

2. Asia Pacific Group on Money Laundering

Malaysia, through the establishment of the National Coordinating Committee To Counter Money Laundering (NCC) in April 2000 and following the cabinet approval joined the APG on 31 May 2000. The Malaysian Anti-Corruption Commission is a member to NCC which comprises of 13 other agencies headed by the Central Bank of Malaysia. The Malaysian Anti-Corruption Commission participated in the drafting of national anti-money laundering plan, Anti-Money Laundering Act 2001 and Mutual Assistance in Criminal Matters Act 2002. The Malaysian Anti-Corruption Commission participated in the APG Mutual Evaluation on Malaysia in 2001, IMF/OGBS Mutual Evaluation on Labuan IOFC 2001 and the APG Mutual Evaluation on Malaysia 2007.

3. ADB/OECD Anti-Corruption Initiative for Asia and the Pacific

Governments in Asia-Pacific have resolved to cooperate in the fight against corruption as early as 1999, when they launched the Anti-Corruption Initiative for Asia-Pacific under the joint leadership of the Asian Development Bank (ADB) and the Organisation for Economic Co-operation and Development (OECD).

The Anti-Corruption Action Plan for Asia and the Pacific, developed in the framework of this Initiative, sets out the goals and standards for sustainable safeguards against corruption in the economic, political and social spheres of countries in the region. To date, 28 countries and economies from Asia and the Pacific have endorsed the Plan and have agreed on implementation mechanisms to achieve its standards.

The Anti-Corruption Action Plan sets high anti-corruption standards and brings about concrete changes in the region's anti-corruption landscape. It encourages the establishment of effective and transparent systems for public service, strong anti-bribery action and promotion of integrity in business operations, and the support of active involvement of the civil society. Moreover, its implementation and review mechanisms support the objectives of the UN Convention against Corruption and the OECD Anti-Bribery Convention in Asia-Pacific. The mechanisms and outcome of this process have earned the Initiative recognition from governments, international and donor organisations, civil society and the private sector.

Countries and economies of the Asian and Pacific region that have endorsed the Anti-Corruption Action Plan and committed to its goals are: Australia; Bangladesh; Bhutan; Cambodia; People's Republic of China; Cook Islands; Fiji Islands; Hong Kong, China; India; Indonesia; Japan; Kazakhstan; Korea; Kyrgyz Republic; Macao, China; Malaysia; Mongolia; Nepal; Pakistan; Palau; Papua New Guinea; Philippines; Samoa; Singapore; Sri Lanka; Thailand; Vanuatu; and Vietnam.
Malaysia hosted the initiative's 4th Steering Group Meeting and 4th Regional Anti-Corruption Conference which was officiated by Dato' Seri Abdullah bin Haji Ahmad Badawi on 3-5 December 2003.

Membership of the Initiative is open to any economy within the Asia-Pacific region that: recognizes the need for action against corruption and the benefits of sharing knowledge and experience across borders; is actively taking steps to implement anti-corruption measures based on international standards; and commits to undertake reforms under the framework and standards of the Action Plan and to participate in the Initiative's review mechanisms.

The Initiative's Steering Group, comprised of representatives of the Initiative's member governments, defines the Initiative's priorities and activities to support the members' efforts in anti-corruption reform. The Advisory Group, which includes donors, civil society representatives, business organizations and other constituencies that support the Initiative, assists the Steering Group by providing technical advice and helps mobilize resources. A small Secretariat, run jointly by the ADB and OECD, supports the Steering Group.

The Action Plan sets out an implementation mechanism that has brought about tangible progress towards establishing sustainable safeguards against corruption since its adoption in late 2001. The mechanism foresees three main ways to support members' efforts to achieve the Action Plan's high standards: fostering policy dialogue and measuring progress; providing analysis to support the policy dialogue; and capacity building to enable members to thoroughly implement the reforms. Strong partnerships between member countries and with relevant regional and international organizations underpin these mechanisms.

4. United Nations Convention against Corruption (UNCAC)

The convention was adopted by UN General Assembly via its resolution 58/4 of 31 October 2003. It was signed by 140 countries ever since 9 December 2003. Malaysia signed it on the same date.

The convention came into force on 14 December 2005 after 30 states ratified it. As at 20 January 2008, 107 states ratified the convention. Malaysia rectified the UNCAC on 24 September 2008.

All together there are 71 articles contained in the convention. The main convention

protocols of UNCAC cover areas of prevention of corruption, criminalisation of corrupt offenders, international cooperation on anti-corruption and asset recovery.
Conference of the State Parties to UNCAC was established pursuant to article 63 of the convention to improve the capacity of and cooperation among state parties to achieve objectives set forth in UNCAC and to promote and review its implementation.

5. APEC Anti-Corruption and Transparency Working Group (ACT)

APEC Economic Leaders put fighting corruption on their agenda in 2003 in Bangkok. The decision was taken to set up a task force under Senior Officials to specifically steer APEC anti-corruption activities and the ACT was established in 2005. Prior to the establishment of ACT, the Malaysian Anti-Corruption Commission played an important and active role in the APEC Meeting of Anti-Corruption Experts in September 2004 in Santiago, Chile to formulate the APEC Course of Action on Fighting Corruption and Ensuring Transparency. The Malaysian Anti-Corruption Commission as a member to this meeting became a member to ACT since then.

The main focuses of ACT are to encourage members to take all appropriate steps towards ratification of, or accession to, and implementation of the UNCAC, strengthen measures to effectively prevent and fight corruption and ensure transparency, deny safe haven to officials and individuals guilty of public corruption, fight both public and private sector corruption, public-private partnership in fighting corruption and ensuring transparency, cooperation among APEC member economies to combat corruption and ensure transparency in the region.

6. International Association of Anti-Corruption Authorities (IAACA)

The establishment of the International Association of Anti-Corruption Authorities (IAACA) was initiated at the High-Level Political Conference for the Purpose of Signing the United Nations Convention against Corruption (UNCAC) in Merida, Mexico in December 2003, and has since received enthusiastic support among the various anti-corruption authorities in many countries and international organizations, as well as a special assistance of the United Nations Office on Drugs and Crime (UNODC) at Vienna.

In the informal consultations on the establishment of an international association of anti-corruption authorities at UN Office in Vienna in April 2006, representatives from international organizations and anti-corruption authorities in Argentina, Azerbaijan, France, Germany, India, Japan, Korea, Latvia, Malaysia, Namibia, Netherlands, Pakistan, Romania, Singapore, South Africa, Uganda, United Kingdom and United States of America, as well as the leaders of the UNODC gave their unanimous support in the establishment of the IAACA.

The Malaysian Anti-Corruption Commission is one of the founding members of this association since 2005. Datuk Seri Ahmad Said bin Hamdan, the Chief Commissioner of the Malaysian Anti-Corruption Commission is a member of its Executive Committee.

The First Annual Conference and General Meeting of IAACA were held in Beijing from 22nd to 26th, October, 2006. About 1000 delegates from 137 countries and 12 international organizations participated in the event. Among them, more than 250 are officials of deputy minister level or above. The President of the People's Republic of China, His Excellency Mr. Hu Jintao, attended the opening ceremony of the Conference and delivered a speech. A formal Declaration was passed on the closing ceremony of the Conference.

On 4-7 October 2012 Malaysia will be hosting the 6th IAACA Annual Conference and General Meeting.

7. Bilateral/Multileral Cooperation - MACC has established bilateral and multilateral cooperation with its counterparts in the region. To date, cooperation has been formalised with

i. Bilateral Cooperation with Anti-Corruption Bureau (ACB) Brunei
ii. Bilateral Cooperation with The National Agency on Corruption Prevention (NACP) Kyrgyz Republic
iii. Bilateral Cooperation with ACA Egypt
iv. Bilateral Cooperation with The Commission of Human Rights and Administrative Justice (CHRAJ) Ghana
v. Bilateral Cooperation with Government Inspectorate of Vietnam
vi. Member of South East Asia Parties Against Corruption (SEA-PAC) (Asian Countries except Myanmar)
vii. Member of ACA Forum (Australia: New South Wales Independent Commission Against Corruption (NSW ICAC) , Hong Kong, China: Independent Commission Against Corruption (ICAC) , Indonesia: Corruption Eradication Commission (KPK) , Korea: Anti-Corruption and Civil Rights Commission (ACRC) Malaysia: Malaysian Anti-Corruption Commission (MACC) , Philippines: Office of the Ombudsman and Singapore: Corrupt Practices Investigation Bureau (CPIB).
viii. Malaysian Anti-Corruption Commission (MACC) and International Anti-Corruption Academy
ix. Malaysian Anti-Corruption Commission (MACC) and ICAC Hong Kong

VI. OTHER APEC ACT LEADERS' AND MINISTERS' COMMITMENTS

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LEADERS' AND MINISTERS' COMMITMENTS

- **2005**: Ministers encouraged all APEC member economies **to take all appropriate steps towards effective ratification and implementation, where appropriate, of the United Nations Convention against Corruption (UNCAC)**. Ministers encouraged relevant APEC member economies to make the UNCAC a major priority. They urged all member economies to submit brief annual progress reports to the ACT Task Force on their APEC anti-corruption commitments, including a more concrete roadmap for accelerating the implementation and tracking progress.
  (See Section I Above, UNCAC)
- **2006**: Ministers underscored their commitment **to prosecute acts of corruption, especially high-level corruption by holders of public office and those who corrupt them.** In this regard, Ministers commended the results of the Workshop on Denial of Safe Haven: Asset Recovery and Extradition held in Shanghai in April 2006. Ministers agreed to consider developing domestic actions, in accordance with member economy's legislation, **to deny safe haven to corrupt individuals and those who corrupt them and prevent them from gaining access to the fruits of their corrupt activities in the financial systems, including by implementing effective controls to deny access by corrupt officials to the international financial systems.**
- **2007**: We endorsed a model **Code of Conduct for Business, a model Code of Conduct Principles for Public Officials and complementary Anti-Corruption Principles for the Private and Public Sectors.** We encouraged all economies to implement these codes and welcomed agreement by Australia, Chile and Viet Nam to pilot the Code of Conduct for Business in their small and medium enterprise (SME) sectors. (AELM, AMM)
- **2008**: We commended efforts undertaken by member economies to develop comprehensive anti-corruption strategies including efforts to restore public trust, ensure government and market integrity. We are also committed **to dismantle transnational illicit networks and protect our economies against abuse of our financial system by corrupt individuals and organized criminal groups through financial intelligence and law enforcement cooperation related to corrupt payments and illicit financial flows.** We agreed to further strengthen international cooperation to combat corruption and money laundering in accordance with the Financial Action Task Force standards. International legal cooperation is essential in the prevention, investigation, prosecution and punishment of serious corruption and financial crimes as well as the recovery and return of proceeds of corruption. (AELM, AMM)
- **2009**: We welcome the Anti-Corruption and Transparency Experts' Task Force's Singapore **Declaration on Combating Corruption, Strengthening Governance and Enhancing Institutional Integrity, as well as the APEC Guidelines on Enhancing Governance and Anti-Corruption**. We encourage economies to implement measures to give practical effect to the Declaration and Guidelines. (AMM)
- **2010**: We agreed to leverage collective action **to combat corruption and illicit** trade by promoting clean government, fostering market integrity, and strengthening relevant judicial and law enforcement systems. We agreed to deepen our cooperation, especially in regard to discussions on achieving more durable and balanced global growth, increasing capacity building activities in key areas such as combating corruption and bribery, denying safe haven to corrupt officials, strengthening asset recovery efforts, and enhancing transparency in both public and private sectors. We encourage member economies, where applicable, **to ratify the UN Convention against Corruption and UN Convention against Transnational Organized Crime and to take measures to implement their provisions, in accordance with economies legal frameworks to dismantle corrupt and illicit networks across the Asia Pacific region. (**AELM, AMM)

NEW ZEALAND

ECONOMY: New Zealand
CALENDAR YEAR: 2012
LAST UPDATED: May 14, 2012

LEADERS' AND MINISTERS' COMMITMENTS

- **2010**: We agreed to enhance our efforts to improve transparency and eliminate corruption, including through regular reporting via ACT and other relevant fora on economies' progress in meeting APEC Leaders' commitments on anti-corruption and transparency.
- **2006**: Ministers endorsed APEC 2006 key deliverables on Prosecuting Corruption, Strengthening Governance and Promoting Market Integrity and encouraged member economies to take actions to realize their commitments. Ministers also encouraged all economies to complete their progress reports on the implementation of ACT commitments by 2007. Ministers welcomed APEC efforts to conduct a stocktaking exercise of bilateral and regional arrangements on anti-corruption in cooperation with relevant international and regional organizations, and encouraged member economies to fully participate in the stocktaking activities.

Objective: Where appropriate, to self-assess progress against APEC Leaders' and Ministers' commitments on anti-corruption, transparency, and integrity and to identify capacity building needs to assist the ACT to identify priority areas for future cooperation.

EXECUTIVE SUMMARY

1. Summary of main achievements/progress in implementing the commitments of APEC Leaders and Ministers on anti-corruption, transparency, and integrity since 2004.
New Zealand has made good progress in implementing the commitments of APEC leaders since 2004. Most notably, New Zealand has passed two significant pieces of legislation that improve our anti-corruption and transparency legal framework: the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 ("AML/CFT Act") and the Criminal Proceeds (Recovery) Act 2009 ("CPRA").
The AML/CFT Act puts into place a comprehensive domestic regulatory and supervisory regime for financial institutions including banks, financial institutions, trust and company service providers and casinos. The regime includes requirements for customer due diligence, beneficial owner identification, record-keeping and the reporting of suspicious transactions. The AML/CFT Act contributes to public confidence in New Zealand's financial system, and will assist in the detection and deterrence of money laundering and terrorist financing. The CPRA establishes a civil forfeiture regime that enables New Zealand authorities to register restraining and forfeiture orders in relation to criminal proceeds. The CPRA regime is also accessible by foreign jurisdictions through a mutual assistance request. CPRA has been in force in New Zealand since 1 December 2009.
The State Services Commission issued a new Code of Conduct on Integrity and Ethics in 2007. The code sets out 16 standards, grouped under the headings Fair, Impartial, Responsible and Trustworthy, with which State servants must comply. The State Services Commissioner has applied this code to all Public Service Departments and most Crown Entities.
New Zealand has also implemented measures that enhance transparency. Since 2006 MPs have been required to register certain personal interests in the Register of Pecuniary and Other Specified Interests. These interests include company directorships and controlling interests, interests in companies and business entities, interests in trusts, real property, debtors, creditors, and gifts. Likewise, MP's expenses are disclosed to the public through the Parliament website. In 2010 the State Services Commissioner introduced a disclosure regime for chief executive expenses, gifts and hospitality. Chief executives of Public Service departments and most Crown entities are expected to disclose their expenses every six months and make this information publicly available on their agency's website and data.govt.nz.
In 2009 the New Zealand Government launched a four-year Government Procurement Reform Programme to promote better value for money. One of the aims of the reform was to improve governance, oversight and accountability of public sector procurement, while also achieving costs savings, building professional procurement capability, and enhancing competitive New Zealand business participation. Implementation of the procurement reforms is accompanied by a training and education programme to increase professional capability and capacity of government procurement practitioners. Updated policy and good practice guides for procuring agencies have been published, covering all stages of the procurement cycle such as procurement planning, contract and relationship management, standards of integrity and conduct, managing conflicts of interest, use of probity auditors, and supplier feedback and complaints. Transparency of tender opportunities and contract awards is facilitated by the Government Electronic Tenders Service. Good practice is also encouraged through Mandatory Rules for Procurement by Departments, and the development of Government Model Contracts and tender document templates.

2. Summary of forward work program to implement Leaders' and Ministers' commitments.
In 2011, the New Zealand Government agreed to an All of Government Response to Organised Crime ("AGROC"). This Response contains a number of projects that will further implement Leaders' and Ministers' Commitments, including:
- Development of a National anti-corruption policy

- Review of New Zealand's mutual legal assistance framework to ensure New Zealand is able to provide the widest measures of mutual legal assistance to foreign states

3. Summary of capacity building needs and opportunities that would accelerate/ strengthen the implementation of APEC Leaders' and Ministers' commitments by your economy and in the region.
New Zealand is an active participant in international fora such as the OECD Working Group on Bribery, the Financial Action Taskforce ("FATF"), and the Asia/Pacific Group on Money Laundering. New Zealand will continue to participate in these international organisations to enhance transparency and anti-corruption measures within the region.

I. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO UNCAC PROVISIONS

LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Take All Appropriate Steps Towards Ratification of, or Accession to, and Implementation of the UNCAC:
- Intensify our efforts to combat corruption and other unethical practices, strengthen a culture of transparency, ensure more efficient public management, and complete all appropriate steps to ratify or accede to, and implement the UNCAC.
- Develop training and capacity building efforts to help on the effective implementation of the UNCAC's provisions for fighting corruption.
- Work to strengthen international cooperation in preventing and combating corruption as called for in the UNCAC including extradition, mutual legal assistance, the recovery and return of proceeds of corruption.

I.A. Adopting Preventive Measures (Chapter II, Articles 5-13)

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RELEVANT UNCAC PROVISIONS

Articles 5, 7, 8, 9, 10, 11, 12, 13, 33, 43, 44, 46, 48, 52, 53, 54, 55, and 57

Intensify our efforts to combat corruption and other unethical practices, strengthen a culture of transparency, ensure more efficient public management, and complete all appropriate steps to ratify or accede to, and implement the UNCAC.

New Zealand has a number of measures aimed at combating corruption and other unethical practices, strengthening a culture of transparency, and ensuring more efficient public management.

Efforts to combat corruption and other unethical practices

New Zealand combats corruption and other unethical practices through a variety of means, including objective and fair recruitment policies, mechanisms to promote and ensure the honesty and integrity of officials, prosecutors, and judges, and measures to prevent corruption in the public sector.

Integrity systems in the public sector

Recruitment: The State Sector Act 1988 sets out certain provisions relating to the employment of State Sector personnel, including appointment on merit, obligation to notify vacancies and equal employment opportunities (http://www.legislation.govt.nz/act/public/1988/0020/latest/whole.html). The selection, training, and remuneration of individual State servants is the responsibility of the Chief Executive of each State sector agency, who must operate within the bounds of the Act. The Act specifically requires Chief Executives to act independently in individual employment decisions affecting staff, which avoids political interference and upholds the political neutrality of the State Services. A Government department, the State Services Commission, issues expectations and guidance on workforce strategy setting, and monitors wage and salary movements across the public and private sectors.
Code of Conduct: The State Services Commission issues guidance and resources to enable State servants to meet their obligations under the State services code of conduct. State servants must conduct themselves according to the standards of integrity and conduct set out in the code of conduct for the State services (see: http://www.ssc.govt.nz/code). The State Services Commissioner has applied this code to all Public Service Departments and most Crown Entities under s 57 of the State Sector Act. The code sets out 16 standards, grouped under the headings Fair, Impartial, Responsible and Trustworthy, with which State servants must comply. State services agencies are required to have policies that give effect to these standards and most

agencies will have a policy specifically addressing conflicts of interest. Conflict of interest policies are likely to specify that declarations of real or perceived conflicts must be made and reviewed periodically by all employees. Ministers of the Crown must conduct themselves according to the standards in the New Zealand Cabinet Manual (see: http://www.cabinetmanual.cabinetoffice.govt.nz/).
The Code is supplemented by a number of Good Practice Guides issued by the Office of the Auditor-General, an independent Officer of Parliament. The Good Practice Guides include:

- Managing conflicts of interest: Guidance for public entities

This Guide sets out good practice in the public sector, discussing what constitutes a conflict of interest and provides an approach for dealing with particular issues (issued in 2007).

- Controlling Sensitive Expenditure: Guidelines for public entities

This Guide outlines principles for "sensitive expenditure" – spending by a public entity that could be seen to give some private benefit to an employee, such as travel and accommodation. It provides an organisational approach that embraces leadership from the top of organization and having suitable sensitive expenditure policies and procedures, and also provides practical guidance on specific types of sensitive expenditure (issued in 2007).

- Guidance for members of local authorities about the Local Authorities (Members' Interests) Act 1968

This provides guidance to local authority members on the Act, which aims to preserve the integrity of local authority decision-making by ensuring that people are not affected by personal motives when they participate in local authority decision-making, and cannot use their position to obtain preferential access to contracts (issued in 2010).

In addition, the Protected Disclosures Act 2000 facilitates the disclosure and investigation of serious wrongdoing by protecting employees who make disclosures under the Act. It requires public sector organisations to establish internal procedures for receiving and dealing with information about serious wrongdoing within the organisation, and to publish these widely in the organisation.
Accountability: New Zealand has a number of important accountability mechanisms. For instance, Ombudsmen (independent Officers of Parliament) may investigate public complaints about administrative acts by central and local government employees. Likewise, the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004 aims to enhance public confidence in the judicial system, and to promote its impartiality and integrity. It does so by establishing an independent Judicial Conduct Commissioner and sets out a process by which the Commissioner will investigate complaints against judges. To preserve the independence of the judiciary, complaints may be made about the conduct of a Judge, not the judicial decision itself.

Awareness raising

In 2006 the Ministry of Foreign Affairs and Trade sent a cable to all of its Posts setting out the procedures that must be followed in the event that the Post receives information about New Zealanders or New Zealand companies who may be engaged in bribery. These instructions were re-circulated in 2007 along with copies of the Ministry of Justice brochure on bribery and corruption.

Strengthen a culture of transparency

Transparency in the public sector is important in New Zealand. Among measures to enhance transparency are:

- Official Information Act 1982: This Act aims to increase the availability of official information to the public and provides a framework for the request and provision of official information. The Local Government Official Information and Meetings Act 1987 is a complementary piece of legislation that applies to local authorities.
- Public Audit Act 2001: This Act establishes the Controller and Auditor-General as an officer of Parliament and reforms and restates the law relating to the audit of public sector organisations.
- Public Finance Act 1989: This Act provides a framework for Parliamentary scrutiny of the government's expenditure and management of assets and liabilities. This contains provisions and obligations for Departments, the Offices of Parliament (Parliamentary Commissioner for the Environment, Office of the Ombudsmen, and the Auditor-General), and various entities listed in Schedule 4 of the Act.
- Crown Entities Act 2004: This Act, among other things, sets out the reporting and accountability requirements for Crown Entities, including the preparation of Annual Reports and Annual financial statements. It also contains conflicts of interest reporting requirements on "members".

Since 2006 MPs have been required to register certain personal interests in the Register of Pecuniary and Other Specified Interests. These interests include company directorships and controlling interests, interests in companies and business entities, interests in trusts, real property, debtors, creditors, and gifts. Likewise, MP's expenses are disclosed to the public through the Parliament website.
In 2010 the State Services Commissioner introduced a disclosure regime for chief executive expenses, gifts and hospitality. Chief executives of Public Service departments and most Crown entities are expected to disclose their expenses every six months and make this information publicly available on their agency's website and data.govt.nz. The code of conduct requires that all State servants "decline gifts or benefits that place us under any obligation or perceived influence". To give effect to this State services agencies are encouraged to run a 'gifts and benefits' register, on which all gifts, benefits and hospitality offered are declared

Ensure more efficient public management

Recognising that efforts to improve value for money in public procurement should go hand in hand with measures to enhance transparency, accountability and integrity, New Zealand supports the OECD Recommendation on Enhancing Integrity in Public Procurement, adopted by the OECD Council in October 2008. This is based on Principles developed by the OECD Public Governance Committee to help governments promote good governance and prevent risks of waste, fraud and corruption in public procurement. The OECD Principles guide the entire procurement cycle from needs assessment through award to contract management and payment. The ten Principles are structured around four pillars: transparency; good management; prevention of misconduct; and accountability and control. The OECD has also developed an on-line Toolbox to help countries put the Principles into practice.
Accordingly, when the New Zealand Government in 2009 launched a four-year Government Procurement Reform Programme to promote better value for money, one of the aims of the reform was to improve governance, oversight and accountability of public sector procurement, while also achieving costs savings, building professional procurement capability, and enhancing competitive New Zealand business participation. The reform programme is led by the Government Procurement Solutions group in the Commercial Solutions Branch of the Ministry of Economic Development. The Cabinet's Expenditure Control Committee (EEC) is overseeing implementation of the programme.
Implementation of the procurement reforms is accompanied by a training and education programme to increase professional capability and capacity of government procurement practitioners. Updated policy and good practice guides for procuring agencies have been published, covering all stages of the procurement cycle such as procurement planning, contract and relationship management, standards of integrity and conduct, managing conflicts of interest, use of probity auditors, and supplier feedback and complaints. Transparency of tender opportunities and contract awards is facilitated by the Government Electronic Tenders Service. Good practice is also encouraged through Mandatory Rules for Procurement by Departments, and the development of Government Model Contracts and tender document templates. A complete list of guides and templates is available at http://www.business.govt.nz/procurement/for-agencies/guides-and-tools/A-to-Z-guides-tools-templates/
As further guidance specifically aimed at avoiding collusion in tendering, the New Zealand Commerce Commission has published "Guidelines for Procurers - How to Deter Bid Rigging" www.comcom.govt.nz/guidelines-for-procurers-how-to-recognise-and-deter-bid-rigging This draws on similar guidelines published by the OECD.
Also, see responses above.

Work to strengthen international cooperation in preventing and combating corruption as called for in the UNCAC including extradition, mutual legal assistance, the recovery and return of proceeds of corruption.

New Zealand has a broad mutual assistance and international cooperation framework. This framework permits New Zealand to receive requests for extradition, assistance, and the restraint or forfeiture of assets from foreign states, regardless of whether or not New Zealand has a formal treaty relationship with the requesting state. The framework comprises:

- The Extradition Act 1999 which permits New Zealand to make and receive extradition requests from all states (though treaty partners and countries with which New Zealand has a close relationship have somewhat simplified procedures).
- The Mutual Assistance in Criminal Matters Act 1992 (MACMA) which provides for requests for assistance in criminal matters (including investigations and proceedings) to be made to and from New Zealand. The Acts permits a range of assistance to be requested, including assistance in locating individuals, obtaining evidence and serving documents.
- The Criminal Proceeds (Recovery) Act 2009 which includes a section permitting foreign restraining or forfeiture orders to be registered in New Zealand. This section links to MACMA and allows New Zealand authorities to assist foreign states by freezing or recovering the proceeds of crime (including corruption).

The measures listed above assist New Zealand's compliance with Articles 5, 7, 8, 9, 10, 11, 12, 13, 33, 43, 44, 46, 48, 52, 53, 54, 55, and 57 of UNCAC.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

AGROC contains a number of relevant projects:

- A review of New Zealand's mutual assistance framework in order to further improve international cooperation. The project will review the domestic mutual assistance systems and ensure they are sufficiently efficient and effective.
- A project which aims to further reduce the misuse of New Zealand legal arrangements and increase legal person transparency.
- The development of a national Anti-Corruption Strategy that covers both the public and private sector.

New Zealand is also currently undertaking a number of actions to improve protections of New Zealand legal persons as required by article 12 of UNCAC:

- A risk assessment framework is being developed to identify risks on the Companies Register, and enhance monitoring of company registrations.
- Information sharing between the Companies Office and Inland Revenue is being improved to help identify and risk assess inactive companies.
- Legislation is in the process of being amended to require New Zealand companies to either have a New Zealand resident director or a resident agent. This legislation will also provide for improved ability to de-register registered companies

and limited partnerships for overseas criminality.

- The AML/CFT Act will come into force in mid-2013. This will regulate trust and company service providers to improve collection of information on beneficial interests. It is intended that this regulation will assist in investigating and prosecuting serious crimes.

The Serious Fraud Office ("SFO"), an agency responsible for the investigation and prosecution of bribery and corruption in conjunction with Police, is currently working with Transparency International New Zealand to develop a training package for both public and private sectors, educating them to the issue of corruption both domestically and internationally. This is likely to be rolled out in August/ September 2012.

I.B. Criminalization and Law Enforcement (Chapter III)

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RELEVANT UNCAC PROVISIONS

Articles 15, 16, 17, 25 and 27

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Domestic bribery offences

Article 15 of UNCAC requires the creation of domestic bribery offences.

New Zealand's bribery and corruption offences are contained in ss 99-105 of the Crimes Act 1961. Section 105 is the offence of general application relating to officials. It makes it an offence for an official to accept or obtain, or agree to accept or obtain, any bribe for themselves or another person to do, or not do, any act in their official capacity. It also covers the person who proffers the bribe, making it an offence for any person to give or offer to give a bribe to any person with intent to influence any official in an act or omission by them in their official capacity. A bribe is defined very broadly, and covers both indirect and direct benefits such as money, valuable consideration, office, or employment, or any other benefit. The offence is complete at an early stage. It is not necessary for the official to actually receive the bribe, only that they have agreed to do so. Likewise, the offence is committed even before the official actually does, or omits to do, the act agreed to. The maximum penalty for both offences is 7 years imprisonment.

The Crimes Act also contains a number of other specific complementary bribery and corruption offences, namely:

- Judicial corruption: It is an offence punishable by 14 years imprisonment for a Judge to accept or obtain, or agree to accept or obtain, a bribe for themselves or any other person to do, or not to do, any act in their judicial capacity. There is a lesser penalty of 7 years imprisonment where the bribe relates to an act or omission by a Judge in their official, rather than judicial, capacity. This second offence also applies to Registrars. A person who proffers a bribe to a Judge or Registrar likewise commits an offence; this offence is punishable by 7 years imprisonment.
- Corruption and bribery of Minister of the Crown: It is an offence punishable by 14 years imprisonment for a Minister of the Crown to accept or obtain, or agree to accept or obtain, a bribe for themselves or for any other person to do, or not to do, any act in their capacity as a Minister or as a member of the Executive. A person who proffers such a bribe likewise commits an offence punishable by 7 years imprisonment.
- Corruption and bribery of member of Parliament: It is an offence punishable by 7 years imprisonment for a member of Parliament to accept or obtain, or agree to accept or obtain, a bribe for themselves or for any other person to do, or not to do, any act in their capacity as a member of Parliament. A person who proffers such a bribe likewise commits an offence punishable by 7 years imprisonment.
- Corruption and bribery of law enforcement officer: It is an offence punishable by 7 years imprisonment to accept or obtain, or agree to accept or obtain, a bribe for themselves or for any other person to do, or not to do, any act in their official capacity. A person who proffers such a bribe likewise commits an offence punishable by 7 years imprisonment.

Foreign bribery offences

Article 16 of UNCAC contains the requirement to create a foreign bribery offence.

New Zealand's foreign bribery offence is contained in the Crimes Act. Under section 105C it is an offence for a person to give, offer, or agree to give a bribe to a person with intent to influence a foreign public official in respect of any act or omission by them in their official capacity in order to: obtain or retain business; or obtain any improper advantage in business. The maximum penalty for this offence is 7 years imprisonment. The offence applies whether or not the act or omission requested is actually within the scope of that foreign official's authority. There is an exception for facilitation payments, where the benefit is small, and the act or omission relates to a routine government action (eg, simply to expedite a routine decision).

Embezzlement and misappropriation offences

Article 17 of UNCAC contains the requirement to establish embezzlement and misappropriation offences by public officials.

A number of Crimes Act offences of general application cover this conduct:
- Section 219 and 220 contain offences of theft and theft by person in a special relationship respectively. The maximum penalty for this offence depends on the value of the property stolen, but ranges from terms of imprisonment of 3 months to 7 years. Fines are also available as a penalty, ranging from $500 to $1000.
- Section 228 contains an offence of dishonestly taking or using a document in order to obtain any property, service, or pecuniary advantage. The maximum penalty is 7 years imprisonment.
- Section 240 makes it an offence for someone to obtain any property, privilege, service, pecuniary advantage benefit or valuable consideration through deception. The maximum penalty depends on the value of the benefit, but ranges from terms of imprisonment of 3 months to 7 years. Fines are also available as a penalty, ranging from $500 to $1000.
- Sections 249, 250 and 252 make it an offence to access a computer system for a dishonest purpose, damage or interfere with a computer system, and access a computer system without authorisation. The maximum penalties for these offences range from 2 – 10 years imprisonment.
- Sections 256 – 259 contain offences relating to forgery which are punishable by 10 years imprisonment
- Section 260 makes false accounting an offence punishable by 10 years imprisonment

Administration of justice offences

Article 25 contains the requirement to create offences of witness intimidation and intimidation of justice and law enforcement officials in relation to UNCAC offences
Under sections 116-117 of the Crimes Act, it is an offence punishable by 7 years imprisonment for a person to:
- conspire to obstruct, prevent, pervert, or defeat the course of justice in New Zealand or the course of justice in an overseas jurisdiction;
- dissuade or attempt to dissuade a person, by threats, bribes, or other corrupt means, from giving evidence in any cause or matter (whether civil or criminal, and whether tried or to be tried in New Zealand or in an overseas jurisdiction); or
- influence or attempt to influence, by threats or bribes or other corrupt means, a member of a jury in his or her conduct as such (whether in a cause or matter tried or to be tried in New Zealand or in an overseas jurisdiction, and whether the member has been sworn as a member of a particular jury or not); or
- accept any bribe or other corrupt consideration to abstain from giving evidence (whether in a cause or matter tried or to be tried in New Zealand or in an overseas jurisdiction); or
- accept any bribe or other corrupt consideration on account of his or her conduct as a member of a jury (whether in a cause or matter tried or to be tried in New Zealand or in an overseas jurisdiction, and whether the member has been sworn as a member of a particular jury or not); or
- wilfully attempt in any other way to obstruct, prevent, pervert, or defeat the course of justice in New Zealand or the course of justice in an overseas jurisdiction.

Secondary liability

Article 27 contains the requirement to create secondary liability offences.
New Zealand has a comprehensive secondary liability regime. Inchoate offence provisions of general application relating to parties to offences (such as aiding or abetting), incitement, attempts and conspiring to commit offences complement existing UNCAC offences within New Zealand's legislative framework.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

New Zealand is currently undertaking work to further enhance our compliance with UNCAC by:
- creating a new criminal offence of the acceptance or solicitation of a bribe by a foreign public official
- creating a new criminal offence where a person solicits or accepts a bribe to use his or her real or supposed influence to influence an official
- increasing the penalty for private sector bribery offences under the Secret Commissions Act 1910
- listing UNCAC in the Mutual Assistance in Criminal Matters Act 1992.

The progression of this work is subject to government priorities.

I.C. Preventing Money-Laundering

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RELEVANT UNCAC PROVISIONS

Article 14

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Art. 14(1) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons, that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering.

New Zealand's current anti-money laundering and countering financing of terrorism (AML/CFT) measures are implemented primarily through the Financial Transactions Reporting Act 1996 (FTRA), which responded to the 1990 and 1996 FATF Recommendations. The FTRA obligates financial institutions, casinos and other businesses (eg. accountants, lawyers) to carry out due diligence on their customers and report any suspicious transactions to the New Zealand Police Financial Intelligence Unit.

As stated earlier, the AML/CFT Act was passed in 2009. The AML/CFT Act builds on obligations under the FTRA, introducing enhanced AML/CFT risk management obligations on financial institutions and casinos ("reporting entities"), along with a comprehensive regulatory and supervisory regime for banks, non-bank financial institutions and casinos. In particular, customer due diligence and account monitoring obligations are significantly enhanced through this piece of reform. These obligations under the AML/CFT Act come into force on 30 June 2013.

A comprehensive suite of regulations were promulgated in June 2011 (the Anti-Money Laundering and Countering Financing of Terrorism Regulations 2011). These regulations largely finalise the regulatory framework for phase one of the New Zealand AML/CFT regime. A final set of mainly administrative regulations containing forms and some final minor policy matters is planned for 2012. Promulgation of the 2012 set of regulations will substantially complete phase one of the enhanced AML/CFT regime in New Zealand.

Art. 14(2) Implement feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders.

The AML/CFT Act sets out obligations to report cross border transportation of cash. The obligations came into force on 16 October 2010. The Anti-Money Laundering and Countering Financing of Terrorism (Cross-border Transportation of Cash) Regulations 2010 set the cash reporting threshold at NZ$9,999.99 (approximately equivalent to US$8000). Relevant offences in the AML/CFT Act are: failure to report cash, structuring of transactions to avoid application of AML/CFT requirements and providing false or misleading information in connection with a cash report. The movement of cash in breach of any requirement in the AML/CFT Act may be considered an offence under the Customs and Excise Act 1996 (importation or exportation of a prohibited good).

Art. 14(3) Implement appropriate and feasible measures to require financial institutions, including money remitters, to:

(a) include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;

(b) maintain such information throughout the payment chain; and

(c) apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

The AML/CFT Act requires reporting entities to meet certain customer due diligence obligations in respect of domestic and international wire transfers. A reporting entity that is an ordering institution must identify the originator of an international wire transfer that is over the applicable threshold of $1,000 by obtaining the originator's full name, account number (or other identifying information that may be prescribed through regulation) and one of the following: originator's address, originator's national identity number, originator's customer identification number, originator's place and date of birth, and any information prescribed by regulations. There are also obligations in respect of domestic wire transfers.

Pursuant to the AML/CFT Act, any originator information must be maintained by a reporting entity that is an intermediary institution. Beneficiary institutions must use effective risk-based procedures for handling wire transfers that are not accompanied by all of the originator information required by the AML/CFT Act and consider whether the wire transfers constitute a suspicious transaction.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

One of the Projects within AGROC is to extend the AML/CFT regime to Designated Non-Financial Businesses and Professions, such as lawyers and accountants. This work is expected to be completed in 2014/15. In the interim these entities will continue to be covered by the current FTRA obligations.

II. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO APEC INEGRITY STANDARDS (CROSS CHECK WITH I.A. ABOVE)

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LEADERS' AND MINISTERS' COMMITMENTS

See below.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Santiago Commitment/COA: Strengthen Measures to Effectively Prevent and Fight Corruption and Ensure Transparency by Recommending and Assisting Member Economies to:

Establish objective and transparent criteria that assure openness for merit, equity, efficiency for the recruitment of civil servants, and promote the highest levels of competence and integrity;

The New Zealand State Services Commission administers the State Sector Act, has an oversight role on general human resources management practices, and provides advice and assistance on these matters to agencies in the State services. However, it is the responsibility of the Chief Executive of each State Services agency to develop and implement specific human resources policies. State servants have access to employment relations services through the Department of Labour and can lodge claims against their employers which may be dealt with independently of government.

i. Access to the public service through a merit-based system.

In appointing employees, agencies must comply with the provisions in the State Sector Act 1988, which requires an employer to give preference to the person who is best suited to the position (State Sector Act 1988, s 77G).

ii. Advertisement for the selection of public servants, indicating the qualifications for selection.

In appointing employees, agencies must comply with the provisions in the State Sector Act 1988, which requires chief executives intending to fill a position that is vacant, or is to become vacant, to, wherever practicable, notify the vacancy or prospective vacancy in a manner sufficient to enable suitably qualified persons to apply for the position (State Sector Act, s61). In practice, a large proportion of State sector jobs are advertised on a dedicated "NZ Government Jobs" website: https://jobs.govt.nz/.

iii. Ways to challenge a decision made in the selection system.

The State Sector Act requires all chief executives to put into place for their agency a procedure for reviewing appointments made within the agency that are the subject of any complaint by an employee of that department (State Sector Act, s 65).
The State Sector Act 1988 sets out certain provisions relating to the employment of State Sector personnel, including obligations relating to appointment on merit, the notification of vacancies, and equal employment opportunities (see http://www.legislation.govt.nz/act/public/1988/0020/latest/whole.html)
The recruitment of individual State servants, however, is the responsibility of the Chief Executive of each State sector agency, who must operate within the bounds of the Act. The code of conduct for the State services requires all State servants operate with the highest levels of competence and integrity (see: http://www.ssc.govt.nz/code).

Adopt all necessary measures to enhance the transparency of public administration, particularly with regard to organization, functioning and decision-making processes;

The State Services Commission has oversight of the integrity system, undertaking reviews to ensure appropriate bodies and officers are in place, and adequate checks and balances are in place across the system, for example an Independent Police Complaints Authority, Judicial Complaints Commissioner, Ombudsmen, Privacy Commissioner etc. It runs a "helpdesk" accessible to State servants who may wish to seek advice or guidance on matters of integrity and conduct. It also investigates allegations of breaches of standards of integrity.

Develop and implement appropriate public financial disclosure mechanisms or codes of conduct for senior-level public officials [SOM III: Guidelines];

See response above at I.A

III. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO SAFE HAVENS (CROSS CHECK WITH I.C. ABOVE):

LEADERS' AND MINISTERS' COMMITMENTS

See below.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Santiago Commitment/COA: Deny safe haven to officials and individuals guilty of public corruption, those who corrupt them, and their assets:

Promote cooperation among financial intelligence units of APEC members including, where appropriate, through existing institutional mechanisms.

Through the SFO, New Zealand's relationships with other international specific anti-corruption bodies are growing, leading to greater cooperation and sharing of financial intelligence where this is appropriate.
The SFO is also building on relationships with international anti-corruption bodies by attending and speaking at conferences such as the 5th Hong Kong ICAC Symposium on fighting corruption. This allows us to share our experiences, learning as well from other agencies, and also developing informal as well as formal networks on which to base future queries and assistance.

The Serious Fraud Office Act (section 51) also specifically allows the SFO to enter into intelligence and information sharing agreements with other like bodies:

a. Agreements with overseas agencies
(1) The Director may enter into any agreement or agreements with any person in any other country whose functions are or include the detection and investigation of cases of fraud or the prosecution of any proceedings which relate to fraud, if—
(a) the agreement relates to a particular case or cases of fraud; and
(b) in the case of an agreement providing for the supply of information by the Serious Fraud Office,—
(i) the Director is satisfied that compliance with the agreement will not substantially prejudice the performance of the Serious Fraud Office's functions in relation to any other investigations; and
(ii) the Director has recommended to the Attorney-General that the agreement be entered into and the Attorney-General has accepted the recommendation.
The SFO uses these provisions when required.

Encourage each economy to promulgate rules to deny entry and safe haven, when appropriate, to Officials and individuals guilty of public corruption, those who corrupt them, and their assets.

Implement, as appropriate, the revised Financial Action Task Force (FATF) 40 Recommendations and FATF's Special Recommendations (Santiago Course of Action)

The New Zealand Government is to consider the implications of the recent revisions to the FATF Recommendations for New Zealand's AML/CFT regime. Further reform of the AML/CFT regime will be progressed during 2013 for implementation in 2014/15.

Work cooperatively to investigate and prosecute corruption offenses and to trace freeze, and recover the proceeds of corruption (Santiago Course of Action)

The SFO has a remit to investigate and prosecute offences, but not to freeze and recover assets. This is carried out by the Asset Recovery Unit of the NZ Police. The SFO and the Asset Recovery Unit work collaboratively on issues. Current and recent cases include:

- An instance where both the bribe and profits arising from the related transaction were recovered as assets and returned to the Crown.
- Another issue where an SFO investigation with an overseas agency is likely to result in asset freezing in both New Zealand and another jurisdiction.
- A current live investigation whereby the SFO, Asset Recovery Unit and other agencies are working very closely to maximize the output from the investigation including both criminal charges and likely recovery of assets.

Implement relevant provisions of UNCAC. These include:

a. Art. 14 (Money laundering)

See above at I.C.

New Zealand's Financial Intelligence Unit, housed in the Police, receives suspicious transaction reports from businesses regulated under the FTRA, undertakes analysis, and disseminates information to domestic authorities regarding potential money-laundering. It is also a full member of the Egmont Group and the information sharing arrangements of that group. New Zealand also receives and provides information via Interpol and various agency bilateral arrangements, as well as through formal mutual legal assistance arrangements.
The Ministry of Justice is the agency responsible for development of the AML/CFT regulatory regime in New Zealand. There are three statutory supervisors under the

AML/CFT Act; the Reserve Bank of New Zealand, the Financial Markets Authority and the Department of Internal Affairs. The Financial Intelligence Unit of the New Zealand Police and the New Zealand Customs Service are also competent authorities under the AML/CFT Act. The AML/CFT requires a co-ordination committee comprising the agencies to be led by the Chief Executive of the Ministry of Justice. The National Coordination Committee ensures that the necessary connections between the AML/CFT supervisors, New Zealand Police and the New Zealand Customs Service are made in order to ensure consistent, effective and efficient operation of the AML/CFT regulatory system once this goes live in 2013.
The AML/CFT Act from June 2013 will require information on international and domestic wire transfers to be collected, and increased scrutiny of transactions which do not meet such requirements, by businesses regulated under the Act.

b. Art. 23 (Laundering of Proceeds of Crime)

New Zealand has criminalised money laundering under s 243 of the Crimes Act. The offence covers the conversion or transfer, concealment or disguise, possession and acquisition of property. It is not necessary that a person be convicted of a predicate offence to establish that assets are the proceeds of a predicate offence and convict someone of laundering such proceeds. Predicate offences to which the Crimes Act money laundering offence applies include all serious offences (imprisonable for up to five years or more). Crimes Act corruption offences are all predicate offences. The additional offences proposed to be introduced via the Anti Corruption legislation will be predicate offences to which the money laundering offence will apply.
The money laundering offence also applies to serious offences committed outside of New Zealand, subject to double criminality requirements being satisfied. Liability for money laundering extends to both natural and legal persons and the requisite intentional element may be inferred from objective factual circumstances. The money laundering offence is punishable by imprisonment for up to seven years for natural persons.

c. Art. 31 (Freezing, seizure and confiscation)

New Zealand enacted CPRA in 2009 to replace the Proceeds of Crime Act 1991. The 2009 Act introduces a civil forfeiture regime for recovering assets and profit obtained from significant criminal activity, where the activity amounts to a criminal offence punishable by 5 years' imprisonment or more, or from which a profit of $30,000 or more has been acquired. This includes UNCAC bribery and corruption offences, as well as the money-laundering offence.
In compliance with Art 31 UNCAC, CPRA allows the New Zealand Police to apply to restrain and forfeit either:

- property acquired as the result of significant criminal activity; or
- property (including legitimately obtained assets) to the value of the profit obtained from significant criminal activity.

Under the CPRA regime a restraining or forfeiture order may be pursued regardless of whether or not a conviction has been obtained in relation to the alleged offending. The Crown is required to prove on the balance of probabilities (i.e. that it is more likely than not) that the property is the proceeds of serious crime or the individual has benefited from significant criminal offending.

d. Art. 40 (Bank Secrecy)

There is no general financial secrecy provision in New Zealand legislation. Moreover, New Zealand enacted the Search and Surveillance Act in 2012, which provides for enhanced search and surveillance powers to investigate offending.

e. Chapter V (Asset Recovery)

The Mutual Assistance in Criminal Matters Act 1992 and the CPRA allow a foreign country to apply to the New Zealand authorities to enforce a foreign restraining or forfeiture order. A forfeiture order will allow authorities to seize any proceeds of crime, or assets equivalent to the value of the profit obtained from the crime. As explained above, such an order does not require a conviction to have been obtained in the requesting country; rather it simply requires the Crown to prove it is more likely than not that the assets are criminal proceeds. This regime enables New Zealand, acting to assist the requesting state, to recover assets that have been improperly obtained.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

Projects in AGROC are directed at improving New Zealand's cooperation with other countries:

- A project to improve interchange with overseas law enforcement agencies to gather information on techniques, methodologies, resources and enforcement approaches for dealing with criminal groups and offending;
- A project aimed at more efficient and broader mutual legal assistance.

Timeframes are dependent on Government priorities.

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

New Zealand actively participates in a number of international bodies with an aim to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering. As stated above, New Zealand is a member of the FATF and the Asia/Pacific Group on Money Laundering. New Zealand also participates in activities carried out by the International Co-operation Review Group through participation in the APG Regional Review Group. New Zealand is also involved in a number of other international fora relevant to anti-money laundering and countering terrorist financing, including the Global Counter-Terrorism Forum (GCTF), APEC Counter-Terrorism Task Force (CTTF), UN Counter-Terrorism Executive Directorate (UN CTED) and the Pacific Working Group on Counter-Terrorism (WGCT).

IV. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO PRIVATE SECTOR CORRUPTION:

LEADERS' AND MINISTERS' COMMITMENTS

See below.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Santiago Commitment/COA: Fight both Public and Private Sector Corruption:

Develop effective actions to fight all forms of bribery, taking into account the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or other relevant anticorruption conventions or initiatives.

Since 2006, the New Zealand Export Credit Office has revised advice it provides to exporting businesses on bribery and the New Zealand Export Credit Office's anti-bribery policy. This information is published on its website. The website emphasises the New Zealand Export Credit Office's commitment to combating bribery and expressly states that legal, corporate and ethical responsibility to ensure it is not knowingly providing support in a transaction involving the offer or the giving of a bribe. The New Zealand Export Credit Office exercises its responsibilities by taking appropriate measures to deter the offer or giving of a bribe, including:

- Informing applicants and/or exporters about the legal consequences of bribery in international business transactions;
- Requiring applicants and/or exporters to provide to the New Zealand Export Credit Office an undertaking or declaration that neither they, nor anyone acting on their behalf, have been engaged, or will engage, in any corrupt conduct including bribery while conducting that transaction;
- Refusing to approve credit, cover or other support where, in the New Zealand Export Credit Office's opinion, there is sufficient evidence or reason to believe that bribery was involved in connection with the export transaction to which the application relates.

New Zealand has a variety of mechanisms to identify and prevent or manage conflicts of interest in the private sector in New Zealand. Many of these are contained in primary or secondary legislation. An important example is the provisions in the Companies Act 1993 governing the disclosure and avoidance of transactions in which the director of a company may be interested. There are also regulatory regimes that cover occupations where there is potential for conflicts of interest. For instance, the Real Estate Agents Act 2008 requires a real estate agent to disclose information concerning conflicts of interest (such as the benefits they stand to gain from the transaction) and creates a criminal offence for failure to disclose that information. Other occupations include provisions in their Code or Rules of Conduct which would trigger disciplinary action if breached.

An important source of law to manage conflicts of interest is the common law (judge made law) in its application to those acting in a fiduciary capacity. A fiduciary is someone who holds a special position of trust and confidence in relation to another person. Fiduciary relationships include trustee/beneficiary, agent/principal, director/company and solicitor/client.

A fiduciary must not enter into arrangements that might give rise to a conflict between their personal interests and those of the person for whom they are a fiduciary. Remedies are available for breach of that duty through the courts. Potential remedies include an account of profits, compensation or creating of a constructive trust in respect of assets the fiduciary received as a result of their breach. The duty and the availability of remedies for breach incentivise appropriate behaviour by those acting as a fiduciary.

Adopt and encourage measures to prevent corruption by improving accounting, inspecting, and auditing standards in both the public and private sectors in accordance with provisions of the UNCAC.

The New Zealand Aid Programme provides financial support to the Pacific Association of Supreme Audit Institutions (PASAI) for its delivery of the Pacific Regional Audit Initiative (PRAI). The Ministry of Foreign Affairs and Trade also funds the NZ Office of the Auditor-General through the New Zealand Aid Programme to provide support to the PASAI secretariat.
The intended outcome of the PASAI is transparent, accountable and effective use of public sector resources in the Pacific, the PRAI being the means to these ends. The PRAI itself has four strategic goals: (1) strengthening regional cooperation, (2) building and sustaining public auditing capacity, (3) conducting cooperative financial and performance audits, and (4) strengthening communications and advocating transparency and accountability. Annual stakeholder surveys are used to show improvements in transparency and accountability.
Progress towards these goals is being made. However, there is a backlog of audits across the region. Clearing these would be a major achievement for PASAI and the region and would allow the PASAI and its members to focus their work on the other strategic goals of the PRAI. Work towards clearing the backlog is ongoing.

Support the recommendations of the APEC Business Advisory Council (ABAC) to operate their business affairs with the highest level of integrity and to implement effective anti-corruption measures in their businesses, wherever they operate.

See response to I.A. above.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

AGROC contains a project to develop a National Anti-Corruption Policy covering both the public and private sector. The policy is intended to cover prevention, detection, investigation and remedy of corruption. Departments are to report back to the Government on the policy in 2013.

V. ENHANCING REGIONAL COOPERATION

LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Strengthen Cooperation Among APEC Member Economies to Combat Corruption and Ensure Transparency in the Region:

- Promote regional cooperation on extradition, mutual legal assistance and the recovery and return of proceeds of corruption.
- Afford one another the widest measure of mutual legal assistance, in investigations, prosecutions and judicial proceedings related to corruption and other offences covered by the UNCAC.
- Designate appropriate authorities in each economy, with comparable powers on fighting corruption, to include cooperation among judicial and law enforcement agencies and seek to establish a functioning regional network of such authorities.
- Sign bilateral and multilateral agreements that will provide for assistance and cooperation in areas covered by the UNCAC. (Santiago Course of Action) These include:
    - o Art. 44 – Extradition
    - o Art. 46 – Mutual Legal Assistance
    - o Art. 48 – Law Enforcement Cooperation
    - o Art. 54 – Mechanisms for recovery of property through international cooperation in confiscation
    - o Art. 55 – International Cooperation for Purposes of Confiscation

- Work together and intensify actions to fight corruption and ensure transparency in APEC, especially by means of cooperation and the exchange of information, to promote implementation strategies for existing anticorruption and transparency commitments adopted by our governments, and to coordinate work across all relevant groups within APEC (e.g., SOM, ABAC, CTI, IPEG, LSIF, and SMEWG).
- Coordinate, where appropriate, with other anticorruption and transparency initiatives including the UNCAC, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, FATF, the ADB/OECD Anti-corruption Action Plan for the Asia Pacific region, and Inter-American Convention Against Corruption.
- Recommend closer APEC cooperation, where appropriate, with the OECD including a joint APEC-OECD seminar on anticorruption, and similarly to explore joint partnerships, seminars, and workshops with the UN, ADB, OAS, the World Bank, ASEAN, and The World Bank, and other appropriate multilateral intergovernmental organizations.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Promote regional cooperation on extradition, mutual legal assistance and the recovery and return of proceeds of corruption.

New Zealand is party to a number of extradition and mutual legal assistance treaties:

- New Zealand has entered into four extradition treaties with Korea, Hong Kong, Fiji and the United States.
- New Zealand may also be bound (depending on extradition partners' views as to whether the extradition treaty remains extant) as a successor state to 50 extradition treaties concluded on its behalf by the United Kingdom prior to independence. These include treaties with Albania, Chile, the Netherlands, Austria, Spain, Thailand, Brazil, Russia and Mexico, amongst many others.
- New Zealand is a party to mutual legal assistance treaties with China, Korea and Hong Kong.

Both the Extradition Act 1999 and the Mutual Assistance in Criminal Matters Act 1992 (which permits assistance in restraining or forfeiting criminal proceeds) allow for ad hoc requests from countries with which New Zealand does not have a formal treaty relationship. This permits any foreign states to apply to make an extradition or mutual legal assistance request.

Afford one another the widest measure of mutual legal assistance, in investigations, prosecutions and judicial proceedings related to corruption and other offences covered by the UNCAC.

New Zealand's mutual legal assistance framework allows New Zealand to receive and execute requests for assistance in criminal matters. The Mutual Assistance in Criminal Matters Act 1992 permits assistance to be provided or sought in relation to both criminal investigations and criminal proceedings. The Act provides for a range of assistance to be requested or sought, including assistance in locating or identifying persons, obtaining evidence, articles, or things, serving documents and enforcing restraining or forfeiture orders.

The Mutual Assistance in Criminal Matters Act does not require assistance to relate to a particular offence (unless the request is made under a specific treaty). If the request is an ad hoc request, it may relate to any offence (within certain limitations, e.g. the request may be denied if the offence is trivial, political or a military offence). In general, New Zealand authorities will offer assistance provided the request is adequate in form and the provision of assistance is not contrary to certain humanitarian grounds and fundamental legal principles.

Designate appropriate authorities in each economy, with comparable powers on fighting corruption, to include cooperation among judicial and law enforcement agencies and seek to establish a functioning regional network of such authorities.

As above, through the SFO, New Zealand's relationships with other international specific anti-corruption bodies are growing, leading to greater cooperation and sharing of financial intelligence, as appropriate.

Sign bilateral and multilateral agreements that will provide for assistance and cooperation in areas covered by the UNCAC. (Santiago Course of Action) These include:

- **Art. 44 – Extradition**
- **Art. 46 – Mutual Legal Assistance**
- **Art. 48 – Law Enforcement Cooperation**
- **Art. 54 -- Mechanisms for recovery of property through international cooperation in confiscation**
- **Art. 55 – International Cooperation for Purposes of Confiscation**

New Zealand has signed and entered into a number of agreements and arrangements with other countries. For instance:

- Agreement between New Zealand and the Government of the Hong Kong Special Administrative Region of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income
- Agreement between New Zealand and the Government of Turkey for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income
- Memorandum of Cooperation between the United States Department of homeland Security, US Customs and Border Protection and the NZ Customs Service regarding the Automated Targeting System-Global (ATS-G) Pilot for Passenger Risk Assessment
- Smartgate Integration Arrangement between the New Zealand Customs Service and the Australian Customs and Border Protection Service
- Memorandum Of Understanding between the Department of Defence of the United States of America Represented by the National Geospatial- Intelligence Agency and the New Zealand Defence Force Represented by the Geospatial Intelligence Organisation Concerning Loan of GEOINT Application Software
- Joint Statement between the New Zealand Department of Labour and the US Department of Homeland Security on Combating Trafficking in Persons in the Pacific Island Region
- Joint Statement between New Zealand and the United States to Strengthen Border Security, Combat Transnational Crime and Facilitate Legitimate Trade and Travel

Work together and intensify actions to fight corruption and ensure transparency in APEC, especially by means of cooperation and the exchange of information, to pro-

mote implementation strategies for existing anticorruption and transparency commitments adopted by our governments, and to coordinate work across all relevant groups within APEC (e.g., SOM, ABAC, CTI, IPEG, LSIF, and SMEWG).

Coordinate, where appropriate, with other anticorruption and transparency initiatives including the UNCAC, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, FATF, the ADB/OECD Anticorruption Action Plan for the Asia Pacific region, and Inter-American Convention Against Corruption.

As provided in the response to III above, New Zealand actively participates in a number of international bodies with an anti-corruption focus, including the OECD Working Group on Bribery, the FATF and the Asia Pacific Group on money laundering.

Recommend closer APEC cooperation, where appropriate, with the OECD including a joint APEC-OECD seminar on anticorruption, and similarly to explore joint partnerships, seminars, and workshops with the UN, ADB, OAS, the World Bank, ASEAN, and The World Bank, and other appropriate multilateral intergovernmental organizations.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

As provided in the response to III above, AGROC includes a project to review New Zealand's mutual assistance framework.

VI. OTHER APEC ACT LEADERS' AND MINISTERS' COMMITMENTS

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LEADERS' AND MINISTERS' COMMITMENTS

- **2005**: Ministers encouraged all APEC member economies **to take all appropriate steps towards effective ratification and implementation, where appropriate, of the United Nations Convention against Corruption (UNCAC)**. Ministers encouraged relevant APEC member economies to make the UNCAC a major priority. They urged all member economies to submit brief annual progress reports to the ACT Task Force on their APEC anti-corruption commitments, including a more concrete roadmap for accelerating the implementation and tracking progress. (See Section I Above, UNCAC)
- **2006**: Ministers underscored their commitment **to prosecute acts of corruption, especially high-level corruption by holders of public office and those who corrupt them.** In this regard, Ministers commended the results of the Workshop on Denial of Safe Haven: Asset Recovery and Extradition held in Shanghai in April 2006. Ministers agreed to consider developing domestic actions, in accordance with member economy's legislation, to deny safe haven to corrupt individuals and those who corrupt them and prevent them from gaining access to the fruits of their corrupt activities in the financial systems, including by implementing effective controls to deny access by corrupt officials to the international financial systems.
- **2007**: We endorsed a model Code of Conduct for Business, a model **Code of Conduct Principles for Public Officials and complementary Anti-Corruption Principles for the Private and Public Sectors**. We encouraged all economies **to implement these codes** and welcomed agreement by Australia, Chile and Viet Nam to pilot the Code of Conduct for Business in their small and medium enterprise (SME) sectors. (AELM, AMM)
- **2008**: We commended efforts undertaken by member economies to develop comprehensive anti-corruption strategies including efforts to restore public trust, ensure government and market integrity. We are also committed **to dismantle transnational illicit networks and protect our economies against abuse of our financial system by corrupt individuals and organized criminal groups through financial intelligence and law enforcement cooperation related to corrupt payments and illicit financial flows.** We agreed to further strengthen international cooperation to combat corruption and money laundering in accordance with the Financial Action Task Force standards. International legal cooperation is essential in the prevention, investigation, prosecution and punishment of serious corruption and financial crimes as well as the recovery and return of proceeds of corruption. (AELM, AMM)
- **2009**: We welcome the Anti-Corruption and Transparency Experts' Task Force's Singapore **Declaration on Combating Corruption, Strengthening Governance and Enhancing Institutional Integrity, as well as the APEC Guidelines on Enhancing Governance and Anti-Corruption**. We encourage economies to implement measures to give practical effect to the Declaration and Guidelines. (AMM)
- **2010**: We agreed to leverage collective action **to combat corruption and**

illicit trade by promoting clean government, fostering market integrity, and strengthening relevant judicial and law enforcement systems. We agreed to deepen our cooperation, especially in regard to discussions on achieving more durable and balanced global growth, increasing capacity building activities in key areas such as combating corruption and bribery, denying safe haven to corrupt officials, strengthening asset recovery efforts, and enhancing transparency in both public and private sectors. We encourage member economies, where applicable, to **ratify the UN Convention against Corruption and UN Convention against Transnational Organized Crime and to take measures to implement their provisions, in accordance with economies legal frameworks to dismantle corrupt and illicit networks across the Asia Pacific region.** (AELM, AMM)

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Take all appropriate steps towards effective ratification and implementation, where appropriate, of the United Nations Convention against Corruption (UNCAC)

New Zealand is actively working towards ratification of UNCAC. The Treaty was referred to a Parliamentary Select Committee for consideration in 2009. The next step is for the select committee to report back on its examination of UNCAC.

Prosecute acts of corruption, especially high-level corruption by holders of public office and those who corrupt them

The SFO and the Police are committed to the investigation and prosecution of acts of corruption. The SFO, in particular, are active where people in public office are involved, and have brought successful prosecutions in this regard when such offices are identified. Most recently this has involved a public official receiving a bribe of $160,000 in relation to a decision made by him in his role in public office. Both he and the individual paying the bribe have been successfully prosecuted.

Implement Code of Conduct for Business, a model Code of Conduct Principles for Public Officials and complementary Anti-Corruption Principles for the Private and Public Sectors

The State Services Commissioner has, under s57 of the State Sector Act 1988, applied a code of conduct for the State services to all Public Service Departments and most Crown Entities.
New Zealand is a signatory to the OECD Guidelines for Multinational Enterprises, which set expectations for the behavior of firms in foreign markets with respect to rule of law, anti-bribery and corruption, etc.

Dismantle transnational illicit networks and protect our economies against abuse of our financial system by corrupt individuals and organized criminal groups through financial intelligence and law enforcement cooperation related to corrupt payments and illicit financial flows

As above, the Serious Fraud Office and the Police are committed to the investigation and prosecution of acts of corruption.

Implement measures to give effect to the Declaration on Combating Corruption, Strengthening Governance and Enhancing Institutional Integrity, as well as the APEC Guidelines on Enhancing Governance and Anti-Corruption

Ratify the UN Convention against Corruption and UN Convention against Transnational Organized Crime and to take measures to implement their provisions, in accordance with economies legal frameworks to dismantle corrupt and illicit networks across the Asia Pacific region

New Zealand signed the United Nations Convention Against Transnational Organised Crime in 2000 and ratified it in 2002.

ECONOMY: RUSSIAN FEDERATION
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LEADERS' AND MINISTERS' COMMITMENTS

- **2010**: We agreed to enhance our efforts to improve transparency and eliminate corruption, including through regular reporting via ACT and other relevant fora on economies' progress in meeting APEC Leaders' commitments on anti-corruption and transparency.
- **2006**: Ministers endorsed APEC 2006 key deliverables on Prosecuting Corruption, Strengthening Governance and Promoting Market Integrity and encouraged member economies to take actions to realize their commitments. Ministers also encouraged all economies to complete their progress reports on the implementation of ACT commitments by 2007. Ministers welcomed APEC efforts to conduct a stocktaking exercise of bilateral and regional arrangements on anti-corruption in cooperation with relevant international and regional organizations, and encouraged member economies to fully participate in the stocktaking activities.

Objective: Where appropriate, to self-assess progress against APEC Leaders' and Ministers' commitments on anti-corruption, transparency, and integrity and to identify capacity building needs to assist the ACT to identify priority areas for future cooperation.

EXECUTIVE SUMMARY

The Russian Federation considers fight against corruption as one of its main priorities. The work to fight corruption related offences and increase transparency is organized in accordance with the National Anti-Corruption Strategy (Approved by the Decree of the President of the Russian Federation № 460 of 13 April 2010) and the National Anti-Corruption Plan for 2012-2013. The previous National Anti-Corruption Plan was implemented in 2010-2011, and it made possible to create a legislative and institutional framework to fight corruption on a fundamentally different level. Both documents, which combine a set of corrective and preventive measures, provide a concrete roadmap to tackle corruption.
The goal of the National Anti-Corruption Strategy is to eliminate the root causes and factors fuelling corruption in Russian society. The following tasks are consistently accomplished to reach the goal of the National Anti-Corruption Strategy:

a) to establish legislative and institutional frameworks for countering corruption that meet contemporary requirements;
b) to arrange implementation of legislative acts and managerial decisions in the field of countering corruption, create conditions preventing corruptive conduct and ensuring lower level of corruption;
c) to ensure that members of society abide by the norms of anti-corruption conduct including, if necessary, the implementation of coercive measures in accordance with the legislative acts of the Russian Federation.

The basic principles of the National Anti-Corruption Strategy are the following:
a) recognizing corruption as one of systemic threats to the security of the Russian Federation;
b) applying a system of anti-corruption measures comprising those to prevent corruption, prosecute persons who have committed corruption-related crimes, and minimize and (or) eliminate the consequences of corruption acts, with a focus on corruption prevention measures at present;
c) stability of the key components of the system of anti-corruption measures established in Federal Law of 25 December 2008 № 273-ФЗ "On Countering Corruption";
d) detailing of anti-corruption provisions of federal laws, the National Anti-Corruption Strategy and the National Anti-Corruption Plan for a relevant period in legal acts of federal executive authorities, other public authorities, public authorities of the constituents of the Russian Federation and in municipal legal acts.

The National Anti-Corruption Strategy shall is implemented in the following key areas:
a) ensuring the involvement of civil society institutions in countering corruption;
b) enhancing anti-corruption activities of federal executive authorities, other public authorities, public authorities of constituents of the Russian Federation and bodies of local self-government;
c) introduction in the activities of federal public authorities, other public authorities, public authorities of the constituents of the Russian Federation and bodies of local self-government of innovative technologies raising objectivity and ensuring transparency in the adoption of legislative (regulatory legal) acts of the Russian Federation, municipal legal acts and managerial deci-

sions, as well as electronic interdepartmental interaction of the said bodies and their interaction with individuals and organizations in rendering public services;
d) improving the system of public property accounting and its efficiency evaluation;
e) eliminating corruption-generating factors that hamper the creation of favorable conditions to attract investments;
f) improving conditions, procedures and mechanisms of state and municipal procurement, including by promoting the practice of open electronic auctions, as well as establishing an integrated federal contractual system to ensure the conformity of indices and results of the execution of public contracts to the initially set parameters and approved indicators of an appropriate budget;
g) expanding the system of legal awareness-raising;
h) updating civil legislation;
i) further development of the legal counter-corruption framework;
j) strengthening the role of commissions on the issues of observance of rules concerning official conduct of public employees of the Russian Federation and resolution of conflicts of interests;
k) improving measures taken by divisions of personnel departments of federal executive authorities and other public authorities to prevent corruption-related and other offences;
l) regular analysis of the situation with corruption and the efficiency of measures to prevent and combat it in the country as a whole and in selected regions;
m) improving the law enforcement practice of law-enforcement agencies and courts in corruption-related cases;
n) enhancing the efficiency of the execution of judgments;
o) elaboration of institutional and legal frameworks for law enforcement monitoring with a view to ensuring the timely adoption, in cases stipulated by federal laws, of acts of the President of the Russian Federation, the Government of the Russian Federation, federal executive authorities, other public authorities, public authorities of the constituents of the Russian Federation, municipal legal acts, as well as with a view to executing judgments of the Constitutional Court of the Russian Federation;
p) improving institutional framework for the anti-corruption examination of regulatory legal acts and draft regulatory legal acts and raising its effectiveness;
q) increasing financial remuneration and pensions of public and municipal employees;
r) expanding limitations, prohibitions and obligations stipulated by legislative acts of the Russian Federation with a view to preventing corruption to persons occupying public positions of the Russian Federation, including chief executive officials (heads of supreme executive public authorities) of the constituents of the Russian Federation, public positions of the constituents of the Russian Federation and municipal positions;
s) improving professional training of specialists in the organization and direct application of anti-corruption measures;
t) improving the financial accounting and reporting system in line with international standards;
u) enhancing the efficiency of the Russian Federation's participation in international anti-corruption cooperation, including the elaboration of the institutional framework for a regional anti-corruption forum, the provision, if necessary, of assistance to other states in training of specialists, analysis of root causes and implications of corruption.

The Russian Federation attaches great importance to strengthening international legal framework for fighting corruption. Russia ratified the United Nations Convention against Corruption (UNCAC) in March 2006 and the Council of Europe Criminal Law Convention on Corruption in October 2006. As of 1 February 2007 Russia became a member of GRECO. On April 17, 2012 the Russian Federation became a party to the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions.

I. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO UNCAC PROVISIONS

LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Take All Appropriate Steps Towards Ratification of, or Accession to, and Implementation of the UNCAC:

- Intensify our efforts to combat corruption and other unethical practices, strengthen a culture of transparency, ensure more efficient public management, and complete all appropriate steps to ratify or accede to, and implement the UNCAC.
- Develop training and capacity building efforts to help on the effective implementation of the UNCAC's provisions for fighting corruption.
- Work to strengthen international cooperation in preventing and combating corruption as called for in the UNCAC including extradition, mutual legal assistance, the recovery and return of proceeds of corruption.

RELEVANT UNCAC PROVISIONS

Chapter II, Articles 5-13 including:

- Art. 5(2) Establish and promote effective practices aimed at the prevention of corruption.
- Art. 7(1) Adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials that:
- Are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;
- Include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;
- Promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;
- Promote education and training programmes to enable them to meet the requirements for the correct, honorable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions.
- Art. 7(4) Adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.
- Art. 8(2) Endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honorable and proper performance of public functions.
- Art. 8(5) Establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials. Art. 52(5)/(6) [sharing the information on the financial disclosures that should be in place]
- Art. 10(b) Simplify administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities.
- Art. 12(2)(b) Promote the development of standards and procedures designed to safeguard the integrity of private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State.
- Art. 12(2)(c) Promote transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities.
- Art. 13(1) Promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption.

UNDERTAKEN AND FURTHER MEASURES TO IMPLEMENT COMMITMENTS

“Measures to Prevent Corruption”

Federal Law № 273-FZ of December 25, 2008 “On countering corruption” (hereinafter “the Law”) defines the basic principles of countering corruption, the legal and institutional framework for prevention and fight against corruption, minimization and/or elimination of the consequences of corruption offenses.
The said Law obliges state and municipal officials to provide information on their income, assets and encumbrances; to notify on attempts to induce to commit corruption offenses, on a (probable) a conflict of interest; it establishes state protection for employees who have notified a representative of employer, public prosecutor or other government agencies on the attempts to induce to commit corruption offenses, on the commission of corruption offenses by other state and municipal officials; the Law also contains provisions on liability of individuals and legal persons for corruption offenses.
According to paragraph 6, Article 3 of the Law, the prioritized implementation of preventive measures is the fundamental principle in countering this negative phenomenon.

Measures to prevent corruption under Article 6 of the Law include:
- nurturing public intolerance to corrupt behavior;
- anti-corruption review of regulations and draft regulations;
- introduction, as prescribed by law, of qualification requirements for citizens applying for assuming state or municipal posts and offices of state or municipal service, and verification, in the prescribed manner, of the information submitted by these persons;
- relief from duty and/or dismissal from the office in the state or municipal service, listed in relevant regulations of the Russian Federation, or the use of other legal measures in case of failure to submit information or deliberate submission of false or incomplete information about their income, assets and property obligations, and submission of false information about income, assets and property obligations of his/her spouse and minor children;
- introduction, into practice of personnel management of the federal state bodies of power, regional state bodies of the Russian Federation, local self-government, of a rule that long, perfect and effective performance by state or municipal employees

of their duties is obligatory when assigning them to a higher position, assigning a military or special rank, class rank, diplomatic rank, or in case of promotion;
- development of public and parliamentary institutions to control the observance of legislation of the Russian Federation on countering corruption.

Article 11 of the Law sets forth the procedure of preventing and resolving conflicts of interest in the state and municipal service.
Article 8 sets forth the mandatory provision of information on income, assets and property obligations.

Federal Law № 329-FZ of November 21, 2011 "On amendments to certain legislative acts of the Russian Federation in connection with the improvement of public administration in fighting corruption", the said Law was complemented with the provisions under which the submission of information on income, property and property obligations became mandatory for persons holding certain positions in state corporations, the Pension Fund of the Russian Federation, the Social Insurance Fund of the Russian Federation, the Federal Compulsory Medical Insurance Fund and other organizations established by the Russian Federation under federal laws, and for certain categories of workers holding positions under employment contracts in the organizations established to perform the tasks assigned to federal state bodies.
In addition, the said federal law amended the legislation on performance in different types of public and municipal service with "dismissal in connection with the loss of confidence", which is used in case of non-observance of prohibitions and restrictions, breach of obligations established by federal law for state and municipal employees .
In order to form an effective system of financial control and verification of property and income of officials the following Presidential Decrees were adopted:

- № 557 on May 18, 2009: "On approving the list of federal civil service positions where citizens or federal civil servants appointed or assigned are required to submit information on their income, assets and property obligations of their spouse and minor children";
- № 558 on May 18, 2009 "On submission by citizens applying for state positions of the Russian Federation and persons holding public offices of the Russian Federation, of information on income, assets and property obligations";
- № 559 on May 18, 2009 "On submission by citizens applying for federal state service positions and federal state servants of information on income, assets and property obligations";
- № 561 on May 18, 2009 "On approval of the procedure of posting the information about income, assets and property obligations of persons holding public offices of the Russian Federation, federal government employees and their family members at the official websites of the federal government and regional state bodies of the Russian Federation and transfer of the information to nation-wide media for publication":
- № 1066 on September 21, 2009 "On the verification of the authenticity and completeness of the information submitted by citizens applying for public offices of the Russian Federation and persons holding public offices of the Russian Federation, and of compliance with the restrictions by persons holding public offices of the Russian Federation";
- № 1065 on September 21, 2009 "On the verification of the authenticity and completeness of the information submitted by citizens applying for federal civil service positions and federal civil servants, and of compliance by federal civil servants with the requirements to official conduct".

Thus, the Russian Federation has the legal framework that enables monitoring the income, which is sufficient for the next step in the implementation of the state anti-corruption policy – control of expenditure.

Federal state bodies have developed and put in place the codes of ethics and official conduct of civil servants.
General principles of conduct for public servants are reflected in Presidential Decree No. 885 of August 12, 2002 (as amended on July 16, 2009) "On approval of the general principles of conduct for civil servants".

Violations of the requirements to official conduct of public officials are reviewed in accordance with the Regulations on the commissions on compliance with the requirements of the official conduct of federal civil servants and the settlement of conflicts of interest, approved by Presidential Decree No. 821 of July 1, 2010 "On commissions on compliance with the requirements to the official conduct of federal public servants and the settlement of conflicts of interest".

Presidential Decree № 821 of July 1, 2010 approved the Regulations on the Commissions responsible for ensuring compliance with the requirements of the official conduct of federal civil servants and settlement of conflicts of interest.
On 23 December 2010, the Presidium of the Council of the President of the Russian Federation for Countering Corruption adopted a Model Code of Ethics and Official Conduct for Officials of State and Municipal Agencies of the Russian Federation, in accordance with the provisions of the Constitution, the International Code of Conduct for Public Officials (General Assembly resolution 51/59 of 12 December 1996), the Model Code of Conduct for Public Officials (annex to Recommendation No. R (2000) 10 of the Committee of Ministers of the Council of Europe of 11 May 2000), the Model Law on the Principles of Municipal Service (adopted at the nineteenth plenary session of the Interparliamentary Assembly of the Commonwealth of Independent States (CIS) (Decision No. 19-10 of 26 March 2002)),

the Federal Anti-corruption Act, the Federal Civil Service System of the Russian Federation Act, the Federal Municipal Service of the Russian Federation Act, other federal laws providing for restrictions, prohibitions and obligations applying to officials of the State and municipal agencies of the Russian Federation, Presidential Decree No. 885 of 12 August 2002 on the adoption of the general principles of the official conduct of public officials, and other laws and regulations of the Russian Federation.

Most of the federal State agencies of the Russian Federation have followed the example of the Model Code and adopted professional codes of ethics for the conduct of officials. For example, Order No. 114 of the Prosecutor-General's Office of the Russian Federation, of 17 March 2010, approved a code of ethics and a training programme for employees of the public prosecution service of the Russian Federation.
Under article 9 of the Federal Anti-corruption Act, a public or municipal official is required to inform a representative of the hirer or employer, the public prosecution service or other State agencies of any approach made to him or her by any person in order to incite him or her to commit a corruption offence.

It is the official duty of a public or municipal official to notify the authorities of any approach made to incite him or her to commit a corruption offence, except in such cases where checks have been or are being carried out on a specific incident. Failure by a public or municipal official to comply with this official requirement is an offence that will result in his or her dismissal from the civil or municipal service or in other sanctions under the law of the Russian Federation.
In accordance with Part 5 of Article 9 of the Federal Law "On Combating Corruption" the Ministry of the Interior of Russia (MIR) issued Order № 293 of April 19, 2010 "On approval of the notification system of the Interior Ministry of Russia about the facts of the corruption inducing behavior" that establishes:
a notification procedure to be used by an employee of the Interior agency, a soldier of internal troops, a federal government civil servant of the MIR to notify a representative of the employer (the employer) about the facts of the corruption inducing behavior;

a notification template to be used by an employee of the Interior agency, a soldier of internal troops, a federal government civil servant of the MIR to notify a representative of the employer (the employer) about the facts of the corruption inducing behavior;

list of data contained in the notification of a representative of the employer (the employer) about the facts of the corruption inducing behavior.

Standards of conduct ensuring proper discharge of official duties by officials of the Internal affairs bodies of the Russian Federation are established by federal and departmental regulations. Examples include such regulations as Federal Law № 3-FZ of February 7, 2011 "On the Police", the CC, Federal Law № 144-FZ of August 12, 1995 "On Operational-Investigative Activity", Order of the MIR № 249 of March 30, 2010 "On approval of instruction on the procedure for officials of the Internal affairs bodies to hold open operational-investigative activities in the form of examination of premises, buildings, structures, terrains and vehicles".

Presidential Decree № 557 of May 18, 2009 approved the list of positions of the federal public service, that require from appointed citizens and federal civil servants to submit information about their income, assets and property obligations, as well as information on income, assets and property obligations of their spouse and minor children.

Presidential Decree № 559 of May 18, 2009 approved the Regulation on submission by citizens applying for federal civil service positions and by federal civil servants of information about income, assets and property obligations, and on forms of relevant certificates.

Presidential Decree № 1065 of September 21, 2009 "On the verification of accuracy and completeness of the information submitted by citizens, applying for the federal civil service positions and by federal civil servants and on compliance with the requirements of official conduct by federal civil servants" approved the Regulations on verification of accuracy and completeness of the information submitted by citizens, applying for the federal civil service positions and by federal civil servants and on compliance with the requirements of official conduct by federal civil servants.
Civil society is involved in preventing and combating corruption through an independent anti-corruption examination of laws and regulations.
This issue is regulated by Federal Law № 172-FZ of July 17, 2009 "On anti-corruption examination of laws and draft laws", the Regulations and Methodology for conducting anti-corruption examination of laws and draft laws № 96 adopted by the Government of the Russian Federation on February 26, 2010; the Rules of preparation of legal acts in the central office of the MIR, approved by Order of the MIR №484 of June 27, 2003, and by the Order of the MIR № 15 of January 15, 2010 "On organization of anti-corruption examination of draft legal acts and other documents in the MIR".

RELEVANT UNCAC PROVISIONS

- Art. 15 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
  - The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
  - The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.
- Art. 16(1) Adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally,
the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage,
for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.
- Art. 17 Adopt measures to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.
- Art. 20 Adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.
- Art. 21 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:
  - The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;
  - The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.
- Art. 27(1) Adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

UNDERTAKEN AND FURTHER MEASURES TO IMPLEMENT COMMITMENTS

Criminalization and law enforcement

In compliance with the requirements of the United Nations Convention against Corruption (UNCAC) the Russian Federation has taken measures to implement its provisions into a national legislation.
The responsibility for giving a bribe to a public official in person or through an intermediary is established by the part 1, article 291 of the CC. The office holder definition is covered by the note 1 of the CC article 285.
An aggravated responsibility is established for bribe-giving to a public official for committing of knowingly illegal actions (omission to act) (CC part 3, article 291).
Bribe-taking definition is covered in CC part 1, article 290 (money, securities, or other assets or property benefits).

According to the Act the subject of a bribe along with money, securities, or other assets could be also property-related services or benefits, that rendered for free, but should be paid for (tour granting, apartment remodeling, house building). The property-related benefits means, in particular, under-estimation of property transferred, privatized asset, decrease of leasing payments and rates of interest for bank loan use. Part 11 of the Plenum of Supreme Court resolution №6 dated 02.10.2000 "About the case-law of courts with regard to cases on bribe-taking and bribery in a profit-making organization" has stipulated that a clearly stated intent of a person to give (take) bribe or "promise" to bribe doesn't constitute elements of attempted bribe-giving. This deed is qualified as preparations for a crime ("Preparations for a Crime, and Attempted Crimes", CC part 1, article 30). According to CC part 2, article 30, criminal responsibility shall ensue only for preparations to commit grave or especially grave crime, which shall be punishable with deprivation of liberty by a maximum of 10 years (grave crime) or more than 10 years (especially grave crime). Bribe-giving to a public official (CC part 1, article 291) is considered to be a crime of little gravity, which shall be punishable with deprivation of liberty for a term of up to two years. Bribe-giving on a large scale (CC part 2, article 291) relates to crime of average gravity category (with deprivation of liberty for a term of up to three years). According to CC part 3, article 291, commission of this deed for knowingly illegal actions (omission to act) in the briber's favor (or his/her principals) constitute a grave crime, because

this article stipulates a punishment with deprivation of liberty for a term of up to eight years. Consequently, the responsibility for active bribery promise in aggravation is stipulated in CC parts 3-5, article 291 (in case of bribery-giving promise for an illegal actions, or on a large scale (if the amount exceeds one hundred fifty thousand rubles), or by a group of persons in a preliminary conspiracy, or by an organized group, or on an especially large scale).

Besides, separate responsibility for intermediary promising or offering in case of bribe-giving is established by CC part 5, article 291.1.
CC parts 1 and 2, article 184 stipulates the special criminal responsibility for bribery of participants and organizers of professional sports and entertainment profit-making competitions.

The responsibility for bribe-taking by a public official, in person or through an intermediary for actions (omission to act) in favour of a bribe-giver or the persons he represents, including an overall patronage or connivance in the civil service which are viewed as amenities, is covered by CC part 1, article 290.
The part 3 of the same article stipulates the responsibility of a public official for perpetration of an illegal act.

CC point "b" part 5, article 290 provides the responsibility for bribe-taking committed with extortion.
According to the note to CC article 285 the subject of criminal offence – bribe-taking, covered by CC article 290, could be a public officials i.e. persons who discharge the functions of a representative of government on a permanent or temporary basis, or by special authority, or who perform organizing and regulative, administrative, and economic functions in state bodies, local self-government bodies, governmental and municipal institutions, and also in the Armed Forces of the Russian Federation, in other troops, and military formations of the Russian Federation.
Separate responsibility for bribe intermediary is established by CC, article 291.1.
Extortion, that is, the demand of a public official to be bribed under threat to commit actions, which could cause harm to the legitimate interests of a citizen or put him in such conditions, when he is obliged to bribe to prevent harmful consequences for his protected interest.

CC part 4, article 290 stipulates a separate criminal responsibility for accepting a bribe by a high level functionaries (persons who hold a government post of the Russian Federation or a government post of a subject of the Russian Federation), as well as by the head of a local self-government body.
Aggravating elements outlining an extra public danger of bribe (extortion, by a group of persons, conspiracy, or by an organized group and etc.) are recognized during a legal assessment process of actions of a party to a bribe-taking, if these circumstances were created intentionally (CC parts 5 and 6, article 290).
Bribe-taker that committed an illegal act in the interest of a bribe-giver or persons he represents, which constitutes elements of a different crime, is subject to responsibility by cumulative punishment according to CC parts 3, article 290 and respective CC article (abuse of official powers, illegal release from criminal responsibility, falsification of evidence and etc.).

CC parts 3 and 4, article 184 stipulates the special criminal responsibility for passive bribery of participants and organizers of professional sports and entertainment profit-making competitions.
The responsibility for bribe-giving to officials of foreign states and public international organizations in person or through an intermediary is established by CC article 291 "Bribe-giving".

Note 2 to CC article 290 covers a definition of "foreign public official". According to this definition, foreign public official means any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected and any person exercising a public function for a foreign country, including for a public agency or public enterprise, and any official or agent of a public international organization; official of a public international organization shall mean an international civil servant or any person who is authorized by such an organization to act on behalf of that organization (CC articles 290, 291 and 291.1).

CC article 160 stipulates the criminal responsibility for misappropriation or embezzlement, that is, the stealing of other people's property entrusted to the convicted person.
The increased criminal responsibility is stipulated by CC part 3, article 160 in case of misappropriation or embezzlement, committed by a person through his official position.
However, the goal of this offence doesn't constitute mandatory element of crime components, covered by the CC article 160. Accordingly, it makes no difference for qualification for what purpose benefits and advantages are derived (for functionary himself or for any other corporate or private person).
Also, the CC articles 285.1 "inappropriate use of public funds" and CC 285.2 "inappropriate use of state non-budgetary funds" are applied to implement the relevant provisions of the UNCAC.

The rulings of the Constitutional Court of the Russian Federation №7-П dated 04.27.2001 and 11-П dated 06.24.2009, which are required to follow in making an assessment of conformity of the UNCAC article 20 to the Constitution of the Russian Federation and its fundamental principles, stipulated that for the purposes of criminal responsibility the article 46 of the Constitution of the Russian Federation pro-

vides presumption of innocence principle, i.e. the responsibility to prove innocence of committing the crime shall lie with the party of the prosecution. In the process of legal treatment of other classes of legal liability the lawmaker is authorized to decide the question of distribution of the burden of proving the charge otherwise.
During the ratification of the UNCAC the Russian Federation stated that it enjoys a jurisdiction over the offences recognized by the UNCAC to be criminal.

CC part 1 article 204 «Bribery in a Profit-making Organization» stipulates the responsibility for the illegal transfer of money, securities, or any other assets to a person who discharges the managerial functions in a profit-making or any other organization, and likewise the unlawful rendering of property-related services to him for the commission of actions (omission to act) in the interests of the giver, in connection with the official position held by this person.

The same acts, committed by a group of persons in a preliminary conspiracy, or by an organized group as well as bribery in a profit-making organization for knowingly illegal actions are qualified according to the CC part 2 article 204.
The incurrence of liability for deeds, stipulated by the provisions of the UNCAC in review and connected with promising and offering of an undue advantage, is covered by the CC article 30 «Preparations for a Crime, and Attempted Crimes». The criminal responsibility shall ensue only for preparations to commit grave or especially grave crime. Because the deeds, covered by the CC parts 1 and 2 article 204, are qualified according to the CC article 15 « Categories of Crimes» as crimes of average gravity, the bribery promising in a profit-making organization (as a preparation to commit this deed) shall involve criminal responsibility only if committed for knowingly illegal actions by a group of persons in a preliminary conspiracy, or by an organized group.
However, the bribery promise in a profit-making organization is qualified as an attempted bribery. The criminal responsibility for committing of this deed shall ensue according to the CC parts 1 and 2 article 204 with reference to the CC part 3 article 30. The bribery with such elements as "any undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting" shall be the ground for criminal responsibility covered by the UNCAC sub-paragraph 1 (a) article 21.

CC parts 1 and 2 article 204 stipulates the responsibility of a person, defined by the CC part 1 of the note to article 201 (head of organization actually), to whom money, securities, or other assets or property benefits are transferred as well as property-related services are rendered.
According to the Plenum of Supreme Court resolution №6 dated 02.10.2000 "On the judicial practice with regard to cases of corruption and commercial bribery", a person who discharges the managerial functions in a profit-making or any other organization and offers to his career subordinate to transfer money, securities, or any other assets in favour of his organization to a person who discharges the managerial functions in a profit-making or any other organization to achieve a desired action (omission to act), bears full responsibility under the CC parts 1 and 2 article 204 as a principal offender, and an employee, who completed his assignment, – as an accomplice in a bribery in a profit-making organization.

The subject of a bribe as well as commercial bribery along with money, securities, or other assets could be property-related services or benefits, that are rendered for free, but should be paid for (tour granting, apartment remodeling, house building). The property-related benefits means, in particular, under-estimation of property transferred, privatized assets, decrease of leasing payments and rates of interest for bank loan use. The abovementioned benefits and services must receive in a finding an estimated monetary value.

When a person, discharging the managerial functions in a profit-making or any other organization, rejected to accept a subject of a bribery in a profit-making organization, the person transferring a subject of a bribe incurs liability for an attempt to commit crime in accordance with the CC article 204.
If a conditional transfer of values doesn't take place for reasons independent from the will of persons who tried to transfer or receive a subject of a bribe, the actions committed should be qualified as an attempted bribery-taking or bribery-giving in a profit-making organization.

CC part 3 article 204 «Bribery in a Profit-making Organization» stipulates the responsibility for the illegal acceptance of money, securities, or any other assets to a person who discharges the managerial functions in a profit-making or any other organization, and likewise the unlawful use of property-related services for the commission of actions (omission to act) in the interests of the giver, in connection with the official position held by this person.

If these deeds are committed by a group of persons in a preliminary conspiracy, or by an organized group and connected with extortion of a subject of a bribe, the responsibility shall ensue according to the part 4 of this article.
The responsibility for bribe intermediary is covered by the CC article 291.1.

The implementation of this provision of the UNCAC is based on the provisions about complicity in a crime provided by the CC article 7.
The definition of complicity in a crime is stipulated by the CC article 32. According to

the article the complicity in a crime means an intentional joint participation of two or more persons in the commission of a deliberate crime.
Thus a participator in a crime could be a private person of sound mind attained the statutory age of criminal responsibility (CC article 20 «The Age of Criminal Responsibility», article 21 «Insanity», article 22 «Criminal Responsibility of Persons with Mental Derangement that Does Not Equal Sanity»).
According to the CC the complicity in a crime is only possible in a deliberate crime.
Each participator in a crime is responsible for its own actions in a joint crime, i.e. the responsibility of the co-perpetrators has individual character.

The CC article 33 defines types of accomplices of a crime.
According to part 1 of the article, the definition of an "accomplice" is broken down into perpetrator, organizer, instigator, and accessory depending on the character of actions.

Part 3 of this criminal rule of law covers all types of perpetrators. A person who has actually committed a crime shall be deemed an organizer, fully fulfilling an objective aspect of crime.
Committing a crime actually together with other persons (co-perpetrators) shall be referred to as co-perpetration. The co-perpetrators shall be persons who have committed all actions, forming an objective aspect of crime. A crime is committed by the co-perpetrators when one of them does one part of a deed and the latter – another.
There is no co-perpetrator if a person, who has assisted in the commission of a crime, only assists other persons to fulfill joint criminal intent, not carrying out any actions, which are deemed to be part of an objective aspect of crime.
Indirect perpetrator shall be a person who doesn't commit a crime but has used for its commission other person who shall not be subject to criminal responsibility due to an age, insanity or other circumstances covered by the CC.

CC part 3 article 33 provides a definition of an organizer of a crime. He can be not an actual participant of a crime. According to part 3, a person who has organized the commission of a crime or has directed its commission, and also a person who has created an organized group or a criminal community (criminal organization) or has guided them, shall be deemed an organizer.

A person who has abetted another person in committing a crime by persuasion, bribery, threat, or by any other method shall be deemed an instigator, as the CC part 4 article 33 stipulates.

Part 5 of the article specify all ways of abetment.
According to the rule of law two types of aiding and abetting are recognized, that is, the physical aiding and abetting manifesting in action and inaction, and intellectual, that is, by providing an advice, instructions and information on committing the crime.
According to the CC article 34 "The Responsibility of Accomplices in a Crime", accomplices are held liable for a crime, committed jointly and an objective aspect of which was fulfilled by the actual perpetrator of the crime (i.e. on the same Article of the Special Part of the Criminal Code). The deeds of organizer, instigator, and accessory are additionally qualified under the appropriate CC part article 33.

According to the CC part 1 article 34, the responsibility of accomplices in a crime shall be determined by the character and the degree of the actual participation of each of them in the commission of the crime.

Responsibility differentiation of accomplices is predetermined by its different contribution in the jointly committed crime. Main and secondary accomplices in a crime are distinguished by nature of participation. The most dangerous figure among them is organizer of a crime, least dangerous – accessory.
Besides the character of participation the responsibility shall be determined by the degree of the actual participation in the commission of a crime.
The responsibility for committing the crime in groups differs from the responsibility of accomplices assisting the actual perpetrator to commit a crime.
The actual perpetrator of the crime is held liable only under the Article of the Special Part of the CC (part 2 article 34).

Except the Article of the Special Part of the CC, the elements essential to the offence, imputed to other accomplices, are stipulated by the appropriate provisions of the CC article 33. Therefore, according to the CC part 3 article 34, the organizer, instigator, and accessory shall bear criminal responsibility under the Article of the Special Part of the CC, which provides for punishment for the commission of a crime stipulated by the CC parts 3, 4 and 5 article 33.

CC part 4 article 34 has stipulated that a person who is not a participant in a crime specially indicated in the respective Article of the Special Part of this Code and who has taken part in the commission of the crime, stipulated by this Article, shall bear criminal responsibility for the given offence as its organizer, instigator, or accessory (for example, functionary, foreign citizen).

According to the CC part 5 article 34, in case the perpetrator of a crime fails to carry out this crime due to circumstances beyond his control, then the rest of the co-perpetrators shall bear criminal responsibility for preparations for a crime or attempted crime.
The forms of participation are stipulated by the CC article 35 «The Commission of a

Crime by a Group of Persons, by a Group of Persons Under a Preliminary Conspiracy, and by an Organized Group of a Criminal Community (Criminal Organization)».
CC article 36 «Excess Perpetration of Crimes» stipulates the excess perpetration rule, based on principle of guilt (CC article 5), according to which a person shall be brought to criminal responsibility only for those socially dangerous deeds and consequences in respect of which his guilt has been established. Objective imputation shall not be allowed.

Only the perpetrator of a crime bears responsibility for the excess of the perpetrator. Other accomplices to the crime shall be responsible only for the deed embraced by their intent.

I.C. Preventing Money-Laundering

RELEVANT UNCAC PROVISIONS

- Art. 14(1) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons, that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering.
- Art. 14(2) Implement feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders.
- Art. 14(3) Implement appropriate and feasible measures to require financial institutions, including money remitters, to:
  (a) include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;
  (b) maintain such information throughout the payment chain; and
  (c) apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

UNDERTAKEN AND FURTHER MEASURES TO IMPLEMENT COMMITMENTS

«Measures to prevent money laundering»

In pursuance of the obligations assumed according to Article 14 of the UNCAC in the sphere of preempting the legalization of money laundering the Russian Federation has taken legislative measures aimed at the creation of the conditions suppressing the financial transactions, intent to legalize crime proceeds, financing terrorism, tax and custom duties evasion, raising corruptive revenues.

The framework for legal regulation in this sphere is defined by the Federal law №115-FZ of August 7, 2001 "On counteracting the legalization (laundering) of revenues obtained by criminal means and financing terrorism".
According to Article 3 of this Law legalization (laundering) of criminal proceeds is defined as rendering legal form to owning, using or operating money assets or other property resulting from committing a crime, with the exception of offences provided for by Articles 193, 194, 198, 199, 199.1, and 199.2 of the Criminal Code of the Russian Federation.

The Law provides for measures aimed at combating legalization of proceeds of crime. These are compulsory procedures of internal audit, prohibition to inform clients or other persons of the taken measures. The provisions concerning the international cooperation in combating laundering of crime proceeds are elaborated in the Law.
Criminal responsibility for legalization (laundering) of money assets or other property acquired in an illegal way is provided for by Article 174 "Legalization (laundering) of Funds and Other Property Acquired by Other Persons by Illegal Means" and Article 174.1 "The Legalization (Laundering) of Monetary Funds or Other Property Acquired by a Person as a Result of an Offence Committed by this Person" of the Criminal Code of the Russian Federation.

Objective aspects of the crimes include carrying out financial operations and other transactions with the mentioned money assets or property. Article 174 stipulates also the aim of committing the criminal actions which is rendering legal form to owning, using or operating the above mentioned property. Besides, part 1 of Article 174.1 provides for an alternative action – using money assets or property acquired illegally for carrying out entrepreneurial and other financial activities.

Active bribery of domestic public officials (Article 291 of the Criminal Code of the Russian Federation), passive bribery of domestic public officials, bribery of members of domestic public assemblies (Article 290 of the Criminal Code of the Russian Federation), active bribery in the private sector (parts 1 and 2 of Article 204 of the Criminal Code of the Russian Federation), passive bribery in the private sector (parts 3 and 4 of Article 204 of the Criminal Code of the Russian Federation) are all predicate offences to the offences provided for by Articles 174, 174.1 of the Criminal Code of the Russian Federation.

According to the national legislation bribery of members of foreign public assemblies, bribery of members of international parliamentary assemblies, bribery of officials of international organizations, and bribery of judges and officials of international courts

are not considered offence, however, a draft Federal Law on introducing amendments to the Criminal Code of the Russian Federation stipulates criminal responsibility of foreign officials and officials of international organizations for such offences. In case of adoption of the Law these offences will also be considered predicate.

In accordance with the new FATF standards on counteracting money laundering, financing terrorism and proliferation of weapons of mass destruction adopted in February 2012 the Government of the Russian Federation is preparing the amendment acts to the Federal law "On exchange regulation and control" (concerning the establishment of the responsibility of resident individuals to report to tax authorities on account (investment) activity with foreign banks and the sanctions regime regarding the failure to perform this legal duty).

Amendment acts are also being prepared to the Federal law "On counteracting the legalization of the proceeds of crime and financing terrorism", which provides for the broadening of the list of organizations, obliged to participate in counteracting money laundering and updating the range of operations subject to mandatory control. Lending agencies and professional stock market participants are vested with the right to retreat unilaterally from the conclusion (execution) of the bank account agreements with the clients presumptively involved in illegal activities.

It is proposed to provide for the strengthening of responsibility for legalization (laundering) of revenues obtained by criminal means in the CC while considering all the criminal acts of the CC to be predicative, as well as scaling down the large and extremely large amounts of money laundered.

The substantial potential for strengthening the effectiveness of combating corruption is attributed to attention focusing by the anticorruption departments of the internal affairs authorities on the priority areas, constituting the main threat to the economic and social security of the Russian Federation.

For example, the departments of the internal affairs authorities are taking a range of organizational and practical measures aimed at identifying crimes related to the theft of funds and frivolous overvaluation of housing and public utilities charges.
Special priority is given to the prevention of crimes committed by civil servants particularly concerning the competitive governmental and municipal tenders and lobbying the interests of business entities.

One of the priority directions in combating corruption is taking a range of organizational and practical measures by the departments of the home affairs authorities aimed at identifying and suppressing the illegal actions of civil servants towards commercial entities. The abusive practice in this sphere is performed by civil servants in the executive bodies in general while exercising licensing functions, allowing the organizations to participate in tendering procedures as well as laying the entrepreneurs under the necessity to employ forced lobbying services.

II. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO APEC INEGRITY STANDARDS (CROSS CHECK WITH I.A. ABOVE)

LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Strengthen Measures to Effectively Prevent and Fight Corruption and Ensure Transparency by Recommending and Assisting Member Economies to:

- Establish objective and transparent criteria that assure openness for merit, equity, efficiency for the recruitment of civil servants, and promote the highest levels of competence and integrity;
- Adopt all necessary measures to enhance the transparency of public administration, particularly with regard to organization, functioning and decision-making processes;
- Develop and implement appropriate public financial disclosure mechanisms or codes of conduct for senior-level public officials [SOM III: Guidelines];

UNDERTAKEN AND FURTHER MEASURES TO IMPLEMENT COMMITMENTS

Decree of the President № 557 (of 18 May 2009) defines the scope of civil servant's activities, which entail heightened corruption risk.

Federal law № 395-FZ (December 2011) provides for the implementation of compulsory rotation (every 3-5 years) of federal civil servants, whose activities entail heightened corruption risk.

Implementation of the concept of competence building approach providing for the selection of a particular nominee building upon his practical efficiency instead of formal matters.

Information campaigns aimed at the promotion of public service are being devel-

oped and introduced in the media.

Establishment of an open federal database, containing the information on all employment vacancies in all federal executive bodies.

Every federal executive body has adopted the codes of ethics and conducts of the civil servants of the Russian Federation.

Federal civil servants are being involved in awareness raising programs on the implementation of anticorruption legislation and providing the consistent conduct of anticorruption activities.

Adoption of the law, providing the staged implementation of payment rates based on a consistent approach.

Decree of the President № 1065 (of 21 September 2010) provides the establishment of special offices within the personnel departments of every federal body responsible for corruption and related crime prevention.

Every federal executive body has adopted its inner enactments regulating the procedure of the notification of bribe solicitation.

Establishment of a joint committee on combating corruption comprising governmental and business representatives.

Federal law № 329-FZ provides the formation of a mechanism verifying the information on the incomes and property of the civil servants. It significantly broadens the group of persons obliged to provide the information on their incomes and property and provides additional anticorruption restrictions.

Decree of the President № 561 (of 18 May 2009) defines the procedure of the layout of the information on incomes on the official websites of the federal executive bodies and the way it is transferred to the media for publishing.

A package of draft legislation aimed at monitoring the expenditures of a wide range of civil servants has been prepared.

Substantive subordinate regulatory legal acts and recommended practice consistent with Federal law № 395-FZ to be prepared during 2012.

Federal law № 329-FZ provides the application of sanctions for the failure by the public servants to comply with the restrictions and prohibitions regarding the conflict of interests and corruption.

Implementation of the National corruption combating plan for 2012-2013 (Decree of the President № 297 of 13 March 2012) that provides numerous measures against the conflict of interests and corruption and reinforces the mandate of the special offices within the personnel departments responsible for corruption and related crime prevention.

Substantive subordinate regulatory legal acts and recommended practice consistent with Federal law №329-FZ to be prepared during 2012.

Adoption of the legislation aimed at monitoring the expenditures of a wide range of civil servants.

III. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO PRIVATE SECTOR CORRUPTION:

LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Fight both Public and Private Sector Corruption:

- Develop effective actions to fight all forms of bribery, taking into account the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or other relevant anticorruption conventions or initiatives.
- Adopt and encourage measures to prevent corruption by improving accounting, inspecting, and auditing standards in both the public and private sectors in accordance with provisions of the UNCAC.
- Support the recommendations of the APEC Business Advisory Council (ABAC) to operate their business affairs with the highest level of integrity and to implement effective anticorruption measures in their businesses, wherever they operate.

UNDERTAKEN AND FURTHER MEASURES TO IMPLEMENT COMMITMENTS

Compliance with the obligations on combating corruption attributed to offenses in the private sector

The Russian Federation expressed its intent to join the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions in February 2009. Since then it worked together with the OECD Working Group on Bribery— made up of representatives from the 38 Convention countries— to ensure harmonization of Russia's legal framework with legal standards of the Convention. against the bribery of foreign public officials in international business transactions.

In May 2011 President of the Russian Federation signed legislation that specifically criminalized foreign bribery, with a significant increase in the monetary sanctions for companies and individuals who bribe foreign public officials to gain business advantages. On May 25, 2011 the OECD invited the Russian Federation to join the OECD's Working Group on Bribery and to accede to the OECD's Anti-Bribery Convention. On the same day Secretary-General of the OECD Angel Gurría signed exchange of letters with First Deputy Minister of Foreign Affairs, Andrey Denisov that formalized full-fledged membership of the Russian Federation in the OECD Working Group on Bribery. OECD Secretary-General Angel Gurría called this event a "significant milestone in Russia's accession to the OECD that underlined the political prior-

ity that the Russian government has given to its fight against bribery and corruption."

On February 1, 2012 after the ratification of the Convention by both chambers of the Federal Assembly of the Russian Federation the President of the Russian Federation signed the Law N 3-FZ "On the Accession of the Russian Federation to the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions".

On February 17, 2012 First Deputy Minister of Foreign Affairs of the Russian Federation Andey Denisov deposited with the OECD Secretary-General Angel Gurría instrument of accession of the Russian Federation to the Convention. Russia has become the 39th Party to the OECD Anti-Bribery Convention on 17 April 2012, 60 days after the ceremony.

Russia will undergo systematic reviews of its implementation of the anti-bribery laws in accordance with the provisions of the Convention. The first examination took place in March 2012.

By the decision of the Office of the Presidential Council for countering corruption (minutes of 4 October 2011№ 28, part 2) a working group on joint anticorruption measures of business and public officials affiliated with the Office of the Presidential Council for countering corruption was established under the supervision of the Minister of economic development of the Russian Federation E.S.Nabiullina.

The primary objective of establishing the working group is to provide action-oriented participation of business representatives in the conduct of actions on combating corruption by federal government authorities. Its main area of activities should concern the development of the measures on counteracting corruption in the entrepreneurial and investment spheres allowing the business society to make its contribution to the anticorruption measures, particularly with regard to eliminating the corruption risks inherent in business activities.

The working group is formed by both the representatives of the federal government authorities and the senior management of the "big four" of the Russian business community associations (the Chamber of Commerce and Industry of the Russian Federation, the Russian union of industrialists and entrepreneurs, All-Russian NGO "Business Russia", All-Russian Organization for Small and Medium Entrepreneurship "Opora Russia"). According to the individual fields of concern allocated according to the master plan of the Working group each of the above-mentioned association is responsible for the elaboration of the corresponding issues and tendering relevant proposals.

Each business association responsible for development of the relevant proposals while elaborating the corresponding issues takes into account the opinions of other business associations and enjoys a close cooperation with the considered members of the working group for the purpose of forming a consolidated attitude of the business community. Such operations management allows to take into account the opinion of a wide range of business representatives and at the same time to act in accordance with the interests of the state regarding economy management.

It should be noted that within the framework of the Working group among the most important areas of cooperation of the representatives of the business community and public authorities in combating corruption the following issues are considered:

- the possibility and appropriateness of legal regulation of lobbying in the Russian Federation;
- the draft anticorruption charter of the Russian business community, the mechanism and stages of its implementation.

The mentioned issues are of particular importance since they are specified in the National Anti-Corruption Plan for 2012-2013 as provided by the Decree of the President of the Russian Federation №297 of 13 March 2012. These issues seem to be of special interest also in the view of the issues relating to the implementation of the provisions of UNCAC, including those concerning public-private partnership.

IV. ENHANCING REGIONAL COOPERATION

LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Strengthen Cooperation Among APEC Member Economies to Combat Corruption and Ensure Transparency in the Region:

- Promote regional cooperation on extradition, mutual legal assistance and the recovery and return of proceeds of corruption.
- Afford one another the widest measure of mutual legal assistance, in investigations, prosecutions and judicial proceedings related to corruption and other offences covered by the UNCAC.
- Designate appropriate authorities in each economy, with comparable powers on fighting corruption, to include cooperation among judicial and law enforcement agencies and seek to establish a functioning regional network of such authorities.
- Sign bilateral and multilateral agreements that will provide for assistance and cooperation in areas covered by the UNCAC. (Santiago Course of Action) These include:
    - o Art. 44 – Extradition
    - o Art. 46 – Mutual Legal Assistance
    - o Art. 48 – Law Enforcement Cooperation
    - o Art. 54 – Mechanisms for recovery of property through international cooperation in confiscation
    - o Art. 55 – International Cooperation for Purposes of Confiscation
- Work together and intensify actions to fight corruption and ensure transparency

in APEC, especially by means of cooperation and the exchange of information, to promote implementation strategies for existing anticorruption and transparency commitments adopted by our governments, and to coordinate work across all relevant groups within APEC (e.g., SOM, ABAC, CTI, IPEG, LSIF, and SMEWG).

- Coordinate, where appropriate, with other anticorruption and transparency initiatives including the UNCAC, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, FATF, the ADB/OECD Anticorruption Action Plan for the Asia Pacific region, and Inter-American Convention Against Corruption.
- Recommend closer APEC cooperation, where appropriate, with the OECD including a joint APEC-OECD seminar on anticorruption, and similarly to explore joint partnerships, seminars, and workshops with the UN, ADB, OAS, the World Bank, ASEAN, and The World Bank, and other appropriate multilateral intergovernmental organizations.

UNDERTAKEN AND FURTHER MEASURES TO IMPLEMENT COMMITMENTS

«Strengthening regional cooperation»

The Russian Federation is a party to almost all universal treaties in the sphere of law enforcement established under the aegis of UN and its specialized agencies, the majority of which contain, in particular, the commitment of the member states to cooperate on extradition and legal aid regarding the offences considered.

The Russian Federation also cooperates with the relevant authorities of the foreign states regarding the issues of extradition and legal aid in criminal cases on the ground of the 1957 European Convention on Extradition, the 1959 European Convention on Mutual Assistance in Criminal Matters, the 1993 CIS Conventions on legal aid and legal assistance in civil, family and criminal matters and bilateral treaties.

The Russian Federation is undertaking consistent measures aimed at broadening and strengthening international cooperation with the relevant authorities of foreign states regarding crime control including treaty conclusion in the spheres considered.

With the purpose of promoting international cooperation on the reimbursement of assets obtained by criminal means a national contact center was established within the Office of the Prosecutor General of the Russian Federation aimed at providing practical international cooperation on identifying, seizing, confiscating and reimbursing the assets obtained by means of corruption activity. The establishment of the Center was announced on the Conference of the States Parties to the UNCAC (Doha, 9-13 November 2009).

Within the framework of the national contact center facilitating the international cooperation on identifying, seizing, confiscating and reimbursing the assets obtained by corruption activity there are contacts established and maintained with the officials directly responsible for the investigation of criminal cases and verifying the queries of the Russian side in foreign states.

The Russian Federation is a party to the European Convention on Extradition. Russia signed the Convention on 7 November 1996 (with reservations and declarations) and ratified the convention (with reservations and declarations) by Federal Law N° 190-03 of 25 October 1999. It is also a party to the European Convention on Mutual Assistance in Criminal Matters. It signed the Convention on 7 November 1996 (with reservations) and it was ratified by Federal Law № 193-03 of 25 October 1999.

The Russian Federation is a party to more than 40 bilateral treaties regulating the issues of legal aid in criminal matters, among others with the following APEC countries: Canada, China, Republic of Korea, Mexico, USA, Japan. It also has nearly 30 bilateral treaties regulating the issues of extradition, namely with China and Vietnam.

In 1992, the Russian Federation and the Peoples' Republic of China concluded the Treaty on Mutual Legal Assistance in Civil and Criminal Matters. The parties committed to carry out requests in criminal cases to

- examine witnesses, victims, experts, indictees;
- conduct search, expert evaluation, inspection and other proceedings related to the collection of evidence;
- transfer material evidence and documents, valuables obtained as a result of crime, and documents related to the proceedings; and
- inform each other of the outcome of the proceedings.

In 1995 the Russian Federation and the Peoples' Republic of China concluded a Treaty on Extradition. The parties committed to extradite on request persons located in their territory, for a criminal prosecution or to implement a sentence already imposed. Extradition is available in respect of any offence punishable by imprisonment for one year or more or by a more severe form of punishment.

In 1999 the Russian Federation and the Republic of Korea concluded a Treaty on Mutual Legal Assistance in Criminal Matters. The legal assistance includes:

- receiving testimony and evidence or complains from individuals;
- providing information, documents, materials and material evidence;
- establishing the whereabouts of persons or objects and identification thereof;
- service of documents;
- execution of requests to conduct search and seizure of objects;
- obtaining testimony from imprisoned persons and other persons, as well as ensuring their assistance in investigation;
- assistance with regard to proceeds of crime; and
- other forms of assistance not prohibited under the legislation of the requesting party.

However, this Treaty does not touch upon such issues as extradition, implementation of sentences or the transfer of prisoners.

The Russian Federation and the United Mexican States concluded a Treaty on

Mutual Legal stance in Criminal Matters of 21 June 2005, which includes:

- service of process;
- obtaining evidence;
- establishment of persons and objects and identification thereof;
- summonsing witnesses, victims and experts for voluntary attendance in a competent authority of the requesting Party;
- temporary transfer of persons in custody for their participation in criminal court proceedings in the territory of the requesting Party as witnesses, complainants or for other proceedings specified in the request;
- taking measures with regard to property;
- transfer of documents, objects and other evidence;
- granting permission to competent authorities of the requesting Party to witness execution of a request; and
- any other forms of legal assistance that do not contradict legislation of the requesting Party.

On 10 December 1981 the Union of Soviet Social Republics and the Socialist Republic of Vietnam concluded a Treaty on Legal Assistance in Civil, Family and Criminal Matters. This Treaty also contains provisions on extradition or to enable the transfer of persons to serve a sentence. This was augmented by a Treaty concluded between the Russian Federation and Socialist Republic of Vietnam in 1998 and a protocol signed on 23 July 2003.

The Russian Federation has concluded a Treaty on Mutual Legal Assistance in Criminal Matters with Canada on 20 October 1998, the Republic of Korea on 28 May 1999 and the United States of America on 17 June 1999.

The Russian Federation and the People's Republic of China concluded a Treaty on Transfer mates on 2 December 2002 and a similar treaty was concluded with the United Mexican States on 7 June 2004.

The Russian Federation has entered into a number of bilateral agreements or arrangements less than treaty status with APEC members relating Extradition, MLA and POC.

In 2005, a Memorandum of Understanding between the Government of the Russian Federation and the Government of Japan on Cooperation in Providing Mutual Legal stance in Criminal Matters and Law Enforcement Activities was signed. The countries agreed to enhance bilateral cooperation between the law enforcement bodies and justice agencies of the two states and to hold consultations on concluding a treaty on mutual legal stance in criminal matters, which would deal with the usual range of issues dealt with in such treaties.

The Prosecutor General's Office of the Russian Federation has concluded the following interagency agreements and memoranda with the following competent authorities of the APEC Member Economies:

- Agreement on Cooperation between the Prosecutor General's Office of the Russian Federation and the Supreme People's Procuracy of the Socialist Republic of Vietnam of 31 October 2007;
- Memorandum of Understanding on Cooperation between the Prosecutor General's Office of the Russian Federation and the Prosecutor General's office of the Republic of Indonesia of 1 December 2006;
- Agreement on Cooperation between the Prosecutor General's Office of the Russian Federation and the Supreme People's Procuracy of the People's Republic of China of 29 March 1997; and
- Agreement on Cooperation between the Prosecutor General's Office of the Russian Federation and the Supreme Procuracy of the Republic of Korea of 28 May 2007.

These agreements include provisions on cooperation in extradition and legal assistance in criminal cases, information exchange on legislation, law enforcement practice and experience in fighting crime.

V. OTHER APEC ACT LEADERS' AND MINISTERS' COMMITMENTS

LEADERS' AND MINISTERS' COMMITMENTS

- **2005:** Ministers encouraged all APEC member economies **to take all appropriate steps towards effective ratification and implementation, where appropriate, of the UNCAC**. Ministers encouraged relevant APEC member economies to make the UNCAC a major priority. They urged all member economies to submit brief annual progress reports to the ACT Task Force on their APEC anti-corruption commitments, including a more concrete roadmap for accelerating the implementation and tracking progress. (See Section I Above, UNCAC)
- **2006:** Ministers underscored their commitment **to prosecute acts of corruption, especially high-level corruption by holders of public office and those who corrupt them.** In this regard, Ministers commended the results of the Workshop on Denial of Safe Haven: Asset Recovery and Extradition held in Shanghai in April 2006. Ministers agreed to consider developing domestic actions, in accordance with member economy's legislation, to deny safe haven to corrupt individuals and those who corrupt them and prevent them from gaining access to the fruits of their corrupt activities in the financial systems, including by implementing effective controls to deny access by corrupt officials to the international financial systems.
- **2007:** We endorsed a model **Code of Conduct for Business, a model Code of Conduct Principles for Public Officials and complementary Anti-Corruption Principles**

for the Private and Public Sectors. We encouraged all economies to implement these codes and welcomed agreement by Australia, Chile and Viet Nam to pilot the Code of Conduct for Business in their small and medium enterprise (SME) sectors. (AELM, AMM)

- **2008:** We commended efforts undertaken by member economies to develop comprehensive anti-corruption strategies including efforts to restore public trust, ensure government and market integrity. We are also committed **to dismantle transnational illicit networks and protect our economies against abuse of our financial system by corrupt individuals and organized criminal groups through financial intelligence and law enforcement cooperation related to corrupt payments and illicit financial flows.** We agreed to further strengthen international cooperation to combat corruption and money laundering in accordance with the Financial Action Task Force standards. International legal cooperation is essential in the prevention, investigation, prosecution and punishment of serious corruption and financial crimes as well as the recovery and return of proceeds of corruption. (AELM, AMM)
- **2009:** We welcome the Anti-Corruption and Transparency Experts' Task Force's Singapore **Declaration on Combating Corruption, Strengthening Governance and Enhancing Institutional Integrity, as well as the APEC Guidelines on Enhancing Governance and Anti-Corruption**. We encourage economies to implement measures to give practical effect to the Declaration and Guidelines. (AMM)
- **2010:** We agreed to leverage collective action **to combat corruption and illicit** trade by promoting clean government, fostering market integrity, and strengthening relevant judicial and law enforcement systems. We agreed to deepen our cooperation, especially in regard to discussions on achieving more durable and balanced global growth, increasing capacity building activities in key areas such as combating corruption and bribery, denying safe haven to corrupt officials, strengthening asset recovery efforts, and enhancing transparency in both public and private sectors. We encourage member economies, where applicable, **to ratify the UN Convention against Corruption and UN Convention against Transnational Organized Crime and to take measures to implement their provisions, in accordance with economies legal frameworks to dismantle corrupt and illicit networks across the Asia Pacific region.** (AELM, AMM)

UNDERTAKEN AND FURTHER MEASURES TO IMPLEMENT COMMITMENTS

The Russian Federation is consistently increasing efforts to counter corruption.

On May 7, 2012 the President of the Russian Federation signed Executive Order On Main Directions of Developing the System of Public Administration. The Executive Order is aimed at improving the system of public administration. The Government of the Russian Federation has been instructed to ensure the achievement of specific performance indicators in the provision of state services.

The instructions also cover the disclosure of information regarding draft laws, the results of public discussions, including the creation of a single online resource; increasing the transparency of self-regulatory organizations; the adoption of the Russian Public Initiative concept to create the conditions for public presentation of proposals submitted by members of the public via the Internet; improving the procedure for assessing the regulatory impact of draft laws; new mechanisms for the formation of public councils in the executive bodies; broader participation of the public and organizations in shaping the standards of state services and monitoring their implementation; providing further training for civil servants involved in the provision of state services; new principles of personnel policy in the state service; introducing a system for monitoring the performance by federal state officials and employees of state corporations whose activities involve corruption risks; enhance fiscal capacity of local budgets.

On May 2, 2012 the President of the Russian Federation signed Order On the Organization in 2012 of Advanced Training for Federal Civil Servants whose Official Duties include the Combat Against Corruption.

The Order was issued as part of the 2012-2013 National Anti-Corruption Plan approved by the Presidential Executive Order of March 13, 2012.

In the aim of developing a common approach to the objectives, tasks and functions of the different federal agencies and departments in fighting corruption and other legal violations, it has been decided that advanced training in this area will be carried out in 2012 by the Russian Presidential Academy of National Economy and Public Administration. According to the Order, up to 1,000 federal civil servants whose duties include taking part in anti-corruption efforts will undergo such advanced training. The Order recommends that regional and local government bodies also organise such training for regional civil servants and municipal employees whose official duties include the combat against corruption.

On April 10, 2012 the President of the Russian Federation approved a list of instructions issued following a March 22, 2012 of the working group to draft proposals for developing the Open Government system, devoted to countering corruption.

The Government has been instructed to publish a register of state-owned enterprises, state corporations, and business associations in which the state has a stake, and provide the justification for keeping these organizations or stakes in state ownership.

The Government and the working group on developing the Open Government system have been instructed to organize public discussion on the necessity of retaining state ownership of or state stakes in business organizations of economic importance, and, based on this discussions' conclusions, draft a list of the organi-

zations that should remain under state ownership.

The relevant instructions have also been given to the regional governors.

An instruction has been issued to present proposals on introducing a ban on holding federal, regional, municipal state office or heading state corporations and organizations under state control for persons convicted of corruption-related crimes.

The Government, together with the working group on developing the Open Government system, have been instructed to draft a list of the most important state services for the public and for business and organize public discussion on ways to improve these services' provision; examine the possibility of establishing additional anti-corruption institutions, primarily to combat corruption in the higher levels of power, and develop the mechanisms for public oversight of their work; examine the expediency of setting up a special board in general jurisdiction courts to try corruption cases; present proposals on procedures for making information on corruption cases in the courts and their verdicts openly available on the Internet and establishing a common information resource for this purpose.

The instructions also concern internal audit in the biggest public companies and state-owned corporations; procedures for publishing on a common Internet portal information on tenders held by companies and business organizations in which the state is the majority shareholder, and other aspects of the fight against corruption.

On March 30, 2012 the President of the Russian Federation submitted draft Federal Constitutional Law On Amendments to Article 10 of the Federal Constitutional Law On the Government of the Russian Federation, as well as draft laws On Monitoring Correspondence between Spending and Incomes of State Officials and Other Individuals and On Amendments to Certain Legislative Acts of the Russian Federation following the Adoption of the Federal Law On Monitoring Correspondence between Spending and Incomes of State Officials and Other Individuals to the State Duma.

Beginning in 2010, certain categories of the Russian Federation civil servants, state officials and state corporations officers have been required to provide information regarding their income, property and proprietary liabilities, as well as information regarding income, property and proprietary liabilities of their spouses and minor children.

In 2011, a Federal Law was passed making individuals holding offices in foundations and other organizations established by the Russian Federation on the basis of federal laws, and certain categories of employees hired under labour contracts by organizations set to fulfill tasks assigned to federal agencies, responsible for presenting this kind of information.

However, the full anti-corruption potential of this measure may only be achieved by monitoring the sources of the money used to obtain property – in other words, monitoring spending.

he President of Russia's Address to the Federal Assembly of December 22, 2011 therefore proposed the idea to implement the examination of spending by specific categories of individuals in cases when their spending on the acquisition of land, other real estate, means of transportation, securities, stocks (equity shares, shares in companies' authorized capital) clearly do not correspond with their incomes.

In order to implement this provision of the Presidential Address, drafts have been prepared for the Federal Law On Monitoring Correspondence between Spending and Incomes of State Officials and Other Individual, the Federal Constitutional Law On Amendments to Article 10 of the Federal Constitutional Law On the Government of the Russian Federation and the Federal Law On Amendments to Certain Legislative Acts of the Russian Federation following the Adoption of the Federal Law On Monitoring Correspondence between Spending and Incomes of State Officials and Other Individuals.

In accordance with the indicated draft laws, individuals holding state offices of the Russian Federation, state offices of federal constituent entities, municipal offices, federal public service offices, public service offices of federal constituent entities, municipal service offices, and certain offices in organizations set to perform state management functions (state corporations, pension funds, etc.), are obligated to file information regarding their spending, as well as spending by their spouses and minor children, pertaining to the acquisition of land, other real estate, means of transportation, securities, stocks (equity shares, shares in companies' authorized capital), and information on the sources of the money thus spent.

Information concerning the incomes of the individual and his or her spouse at their primary jobs is published on official government and municipal websites, as well as the websites of organizations set to perform state management functions.

The draft laws also specify procedures for monitoring the said spending and establish that when circumstances are revealed attesting to a discrepancy between spending by the individual in question, or his or her spouse and minor children, and their incomes, the information obtained through such monitoring is to be forwarded to law enforcement agencies of respective jurisdiction and are mandatorily presented to the prosecution authorities of the Russian Federation. Upon receiving such materials, the Prosecutor General of the Russian Federation or subordinate prosecutors shall submit a request to a court for alienating such land, other real estate, means of transportation, securities, stocks (equity shares, shares in companies' authorized capital) and converting it into public revenue, in cases when such property is not accompanied by evidence confirming its procurement through lawful forms of income.

To implement this stipulation, the Civil Code of the Russian Federation shall be supplemented with the corresponding provisions.

Corresponding amendments shall also be made to the Civil Code of the Russian Federation, the Law On the Tax Authorities of the Russian Federation, the Federal Laws On Banks and Banking Activities, On the Prosecutor General's Office of the Russian Federation, On the Status of a Member of the Council of Federation and a Deputy of the State Duma of the Federal Assembly of the Russian Federation, On the Accounts Chamber of the Russian Federation, On General Principles for Organizing Legislative (Representative) and Executive Government Authorities in Constituent Entities of the Russian Federation, On Combating Legalization (Laundering) of the Proceeds of Crime and Financing of Terrorism, On State Civil Service in the Russian Federation, On Countering Corruption, and several other laws.

The measures stipulated by these draft laws conform to the National Strategy for Countering Corruption, approved by the April 13, 2010 Executive Order of the President of the Russian Federation, and comply with the requirements of international conventions on establishing liability for unlawful enrichment.

The amendments made to the Federal Law On Combating Legalization (Laundering) of the Proceeds of Crime and Financing of Terrorism are aimed at meeting the Russian Federation's international obligations.

On March 13, 2012 the President of the Russian Federation signed Executive Order On the National Anti-Corruption Plan for 2012–2013 and Amendments to Certain Acts of the President of the Russian Federation on Countering Corruption.

The Executive Order approves the National Anti-Corruption Plan for 2012–2013 and also includes corresponding instructions and recommendations to the heads of federal executive bodies, other government agencies, and the Supreme Court of the Russian Federation.

The Civic Chamber, the Chamber of Commerce and Industry, the Russian Non-Commercial Organization Association of Lawyers of Russia, political parties, self-regulating organizations, and public unions and associations of industrialists and entrepreneurs are invited to develop a draft federal law on public oversight of the work of federal executive bodies, as well as regional and municipal government bodies, and to continue efforts to establish a countrywide culture of intolerance to corrupt behavior.

Amendments were also made to certain acts of the President of Russia on anti-corruption issues.

An important outcome of the UN global anti-corruption forum held in Marrakesh, Morocco, in October 2011 was the unanimous decision to hold the 2015 Conference of the States Parties to the UN Convention Against Corruption in the Russian Federation.

The meeting participants underlined the marked progress in improving Russia's anti-corruption legislation and its practical application.

Russia's proposal on promoting constructive dialogue with civil society as part of monitoring the implementation of the UN Convention Against Corruption received strong support.

In addition, the implementation of Russian anti-corruption initiatives will continue within the framework of Russia's G20 Presidency in 2013.

The G20 Leaders' Declaration adopted at the Cannes Summit in November highlights the achievements of the Russian Federation in combating corruption, especially in the implementation of the G20 Anti-Corruption Action Plan, adopted at the Seoul Summit in 2010. The extensive support for Russia's anti-corruption efforts expressed by the UN and the G20 testifies to the recognition by the international community of the progress made by Russia in the implementation of its national policy on combating corruption.

ECONOMY: SINGAPORE
CALENDAR YEAR: 2012
LAST UPDATED: May 10, 2012

LEADERS' AND MINISTERS' COMMITMENTS

- **2010**: We agreed to enhance our efforts to improve transparency and eliminate corruption, including through regular reporting via ACT, and other relevant fora on economies' progress in meeting APEC Leaders' commitments on anti-corruption and transparency.
- **2006**: Ministers endorsed APEC 2006 key deliverables on Prosecuting Corruption, Strengthening Governance and Promoting Market Integrity and encouraged member economies to take actions to realize their commitments. Ministers also encouraged all economies to complete their progress reports on the implementation of ACT commitments by 2007. Ministers welcomed APEC efforts to conduct a stocktaking exercise of bilateral and regional arrangements on anti-corruption in cooperation with relevant international and regional organizations, and encouraged member economies to fully participate in the stocktaking activities.

Objective: Where appropriate, to self-assess progress against APEC Leaders' and Ministers' commitments on anti-corruption, transparency, and integrity and to identify capacity building needs to assist the ACT to identify priority areas for future cooperation.

EXECUTIVE SUMMARY

1. Summary of main achievements/progress in implementing the commitments of APEC Leaders and Ministers on anti-corruption, transparency, and integrity since 2004.

- Singapore assumed Chairmanship of the APEC-Anti-Corruption and Transparency Task Force in 2009 and in this connection presided over the ACT's agreement on the following documents: (a) the Singapore Declaration on Combating Corruption, Strengthening Governance and Enhancing Institutional Integrity; (b) APEC Guidelines On Enhancing Governance and Anti-Corruption. Our 2009 Chairmanship also saw the Corrupt Practices Investigations Bureau (CPIB) of Singapore organising a workshop on 'Governance and Anti-Corruption' for more than 100 participants.
- CPIB/Singapore sees the current applicable and accepted global anti-corruption standard/norms as those agreed upon and enshrined under UNCAC. Singapore signed the UNCAC on 11th November 2005. With the legal and procedural framework in place to implement the Convention, Singapore ratified the UNCAC on 6th November 2009 and the UNCAC took effect for Singapore as of 5th December 2009.
- Singapore is a regular participant at various UNCAC meetings and processes, including the UNCAC Implementation Review mechanism. In this regard, Singapore was a reviewing state party for Argentina in the first year (10/11) of the current cycle of the UNCAC review mechanism and is also a reviewing state party for El Salvador in the second year (11/12). Singapore is due for UNCAC implementation review in the fourth year (13/14) of the current review cycle.

2. Summary of forward work program to implement Leaders' and Ministers' commitments.

To effectively combat corruption, Singapore continues to undertake the following:

- Enhance the effectiveness of the anti-corruption enforcement agency, i.e., the CPIB, which was founded in 1952. The CPIB investigates and recommends the prosecution of corruption offences in both the private and public sectors;
- Periodically review the effectiveness of its law for the investigation and prosecution of corruption offences;
- Maintain and ensure an effective judicial system. In appropriate cases, Deputy Public Prosecutors from the Attorney-General's Chambers (AGC) address our courts on sentencing, including the need to mete out sentences sufficient to deter corrupt practices;
- Maintain an effective and efficient public administration by bringing continuous improvement to public services. Government departments continue to streamline its process and cut down on red-tape. As public administration is made more transparent and efficient (like going electronic), opportunities for corruption are reduced. In addition the Government takes appropriate administrative measures to ensure that the public service maintains a high degree of integrity;
- Public education efforts pertaining to corruption prevention. In this regard, CPIB conducts anti-corruption talks to business chambers (Singapore Business Federation being the apex) and key industry associations & public sector agencies, as well as outreach programmes to schools/educational institutions, grassroots organisations and other communities (like sports) to educate them on the importance of maintaining a strong anti-corruption ethos in Singapore.

3. Summary of capacity building needs and opportunities that would accelerate/ strengthen the implementation of APEC Leaders' and Ministers commitments by your economy and in the region.

I. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO UNCAC PROVISIONS

LEADERS' AND MINISTERS' COMMITMENTS

- **Santiago Commitment/COA: Take All Appropriate Steps Towards Ratification of, or Accession to, and Implementation of the UNCAC:**
- Intensify our efforts to combat corruption and other unethical practices, strengthen a culture of transparency, ensure more efficient public management, and complete all appropriate steps to ratify or accede to, and implement the UNCAC.
- Develop training and capacity building efforts to help on the effective implementation of the UNCAC's provisions for fighting corruption.
- Work to strengthen international cooperation in preventing and combating corruption as called for in the UNCAC including extradition, mutual legal assistance, the recovery and return of proceeds of corruption.

I.A. Adopting Preventive Measures (Chapter II, Articles 5-13)

RELEVANT UNCAC PROVISIONS

- Chapter II, Articles 5-13 including:
- Article 5(2) Establish and promote effective practices aimed at the prevention of corruption.
- Art. 7(1) Adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials that:
  - are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;
  - include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;
  - promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;
  - promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions.
- Art. 7(4) Adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.
- Art. 8(2) Endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.
- Art. 8(5) Establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials. Art. 52(5)/(6) [sharing the information on the financial disclosures that should be in place]
- Art. 10(b) Simplify administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities
- Art. 12(2)(b) Promote the development of standards and procedures designed to safeguard the integrity of private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State.
- Art. 12(2)(c) Promote transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the
establishment and management of corporate entities.
- Art. 13(1) Promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Article 5(2) Establish and promote effective practices aimed at the prevention of corruption.

The Singapore Government adopts a zero-tolerance attitude towards corrupt practices, both in the private and public sectors, under the charge of the CPIB. The Prevention of Corruption Act (Chapter 241) was enacted in June 1960 to provide for the more effectual prevention of corruption. The law also empowers CPIB officers to investigate and arrest corrupt offenders. Public leaders show strong commitment to its implementation with tough enforcement and discipline to ensure that wrongdoers are held accountable and serve as deterrents. The competitive salaries paid to civil servants also reduce the likelihood of them falling to temptation.

Art. 7(1) Adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials that:

- are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;
- include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;
- promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;
- promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions.

The Civil Service recruitment policies and processes are designed based on the following principles:

(a) Meritocracy: The best person is recruited for the job through open competition on the basis of merit; and
(b) Impartiality and incorruptibility: Selection is based on objective and defensible criteria, and all candidates who meet its requirements should be considered for appointment

Selection of candidates is a collective decision by an interview panel that comprises at least 3 officers who are impartial, independent and unrelated to the candidates.

The appraisal system for civil servants is designed bearing in mind the need to be fair, rigorous and objective. The Ministry ranks and assesses the officers' potential and performance and recommends deserving officers for promotion. There is also an appeals mechanism in place as a further check that the decisions of the promotion authorities are fair. The remuneration of civil servants are reviewed regularly, and benchmarked to the private sector, for purposes of talent attraction and retention.
Anti-corruption education and outreach efforts are spearheaded by CPIB who hold talks in various agencies. Anti-corruption messages are also embedded in induction programmes for new officers joining the Civil Service, and in programmes that deal with the ethos and values of the Civil Service.

Art. 7(4) Adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

Civil Servants are guided by a Code of Conduct, which is based on the principles of incorruptibility, impartiality, integrity and honesty. An officer must not act in a way that gives rise to perception that he has obtained special advantage through his official position.
There should be no conflict of interest between an officer's official position and activities outside his official duties. An officer has a duty to exercise care to preserve his ability to be fair and impartial in carrying out his official duties. In the course of an officer's work (e.g. any meeting or deliberation), when decisions are taken on issues which an officer has, or may be deemed to have a personal interest in, the officer must declare his interest. Other supporting policies include those on acceptance of gifts / entertainment and a framework for reporting wrongdoing.

Art. 8(2) Endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.

The Civil Service is governed by a Code of Conduct based on the principles of integrity, incorruptibility and impartiality. The Code articulates key conduct principles and expected behaviour of the officers. All officers are expected to maintain a high standard of conduct by upholding the integrity of the Public Service and public confidence in it. Corruption, which is an abuse of position and trust, is not tolerated.
All criminal offences are rigorously pursued by the relevant authorities and the ultimate decision on whether prosecutions, including of civil servants, take place rests with the Attorney-General (AG) who is also the Public Prosecutor (PP). If a civil servant has not engaged in illegal activities but is deemed to have violated the code of conduct, that civil servant will be subject to disciplinary measures, which includes dismissal.

Art. 8(5) Establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials. Art. 52(5)/(6)

Some related requirements under the Code of Conduct for the Civil Service include:
Participation in outside activities
All officers are required to seek prior permission before taking part in outside activities which are related to their official work or duties. The officer is required to ensure that there will be no conflicts of interest between his official duties and outside activities.

Participation in outside employment Before taking up employment with another employer other than the Government, officers must seek prior permission, and ensure that there will be no conflicts of interest between his official duties and outside employment.

Declarations of Investment, Properties or Indebtedness All officers are required to make a declaration of their investments (e.g. shares, properties) and indebtedness when they are first appointed into the Service and a fresh declaration is done annually thereafter. In personal investments, officers must not take up concessions if the offers arose on account of dealings or acquaintanceship in an official capacity.

Gifts and Entertainment Officers must not offer or accept any favours or special concessionary treatment, or become obligated to any party. This includes not accepting or soliciting any gifts, benefits or entertainment from those who have official dealings with them. Where it is inappropriate to decline, they must declare such gifts promptly to their agency.

Art. 10(b) Simplify administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities

The Singapore Civil Service constantly seeks to improve service quality and service delivery to the members of the public. Embodying this is the PS21 movement which was launched in 1995 to promote change, work improvement and innovation, and ensure that the Public Service remains relevant to its stakeholders.

The PS21 movement aims to build a change-ready Public Service through the inculcation of 5 key cultural behaviours -Critical Thinking, Continual Learning, Customer-Centricity, Collaboration and Effective Communication. The 5Cs are critical capabilities and capacities that the Public Service needs to develop in order to drive Public Service Transformation, as well as a culture of change and improvement amongst our public officers.

Centrally the government maintains a multi-tier platform to facilitate access to the government by members of the public. At the whole-of-government level, the government solicits feedback from engages the Citizenry in its policy making and review process. These are done through programme such as REACH programme, cut-waste panel, etc.

Government Departments and Statutory Boards are also required to maintain active feedback channels for members of the public. Senior officers are appointed as Quality Service Managers so that members of the public can have access to senior management of each department should they feel aggrieved by any decision made by any public officers.

Art. 12(2)(b) Promote the development of standards and procedures designed to safeguard the integrity of private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State.

Where necessary, Singapore regulates the various industries through regulation and regulatory bodies. Various professional bodies are accorded disciplinary/administrative power according to legislations to sanction improper performance of business. Procurement and contractual relations between the State and private business entity are governed by the Government Procurement Act, Chapter 120 and its four subsidiary legislations namely :

- Government Procurement (Challenge Proceedings) Regulations
- Government Procurement Regulations,
- Government Procurement (Application) Order and
- Government Procurement Act (commencement) Notification 2002.

In addition, there is a Government Instructions Manual on procurement procedures and this is publicly available on the Singapore Government Internet Portal for Procurement: http://www.gebiz.gov.sg. All government officials are required to declare conflict of interests, if any, at any stage of the procurement process. This is to ensure integrity in carrying out the procurement process.

The Auditor-General is mandated by the Constitution of the Republic of Singapore and the Audit Act to carry out audits and report to the President and Parliament so as to enhance the accountability of public sector agencies on the proper accounting of public moneys and use of public resources.

In this regard, the Auditor-General's Office may in the course of its audits of public sector entities, make recommendations for improvements in areas (e.g. procurement) where lapses or weaknesses had been found.

Art. 12(2)(c) Promote transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities.

The Accounting and Corporate Regulatory Authority (ACRA) administers the Accountants Act, the Business Registration Act, the Companies Act, the Limited Liability Partnerships Act and the Limited Partnerships Act. These Acts govern auditors, sole

proprietorships, partnerships, companies, limited liability partnerships and limited partnerships. They require the various entities to notify ACRA of the persons managing the entities (eg. directors for companies, managers of limited liability partnerships etc) and any changes to such persons or their details.
ACRA oversees the general compliance in the disclosure of corporate information of the above entities (and financial information of certain entities), raising of stakeholders' competence with targeted training and creating awareness of relevant rules through public education. One of ACRA's key strategies is to achieve voluntary compliance through its initiatives and programmes. However, ACRA will take enforcement action in appropriate cases.

Art. 13(1) Promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption

Singapore has different public education efforts pertaining to corruption prevention targeted at different segments of the population. The Corrupt Practices Investigation Bureau (CPIB) conducts anti-corruption talks to business chambers (Singapore Business Federation being the apex) and key industry associations & public sector agencies, as well as outreach programme to schools/educational institutions, grassroots organisations and other communities (like sports) to educate them on the importance of maintaining a strong anti-corruption ethos in Singapore. From January 2011 to date, CPIB has conducted more than 80 corruption prevention talks for a total audience of approximately 12,000.

Operationally CPIB makes available every possible means for members of the public to provide information relating to possible corruption offences committed.

I. B. Criminalization and Law Enforcement (Chapter III)

RELEVANT UNCAC PROVISIONS

- Art. 15 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
  - The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
  - The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.
- Art. 16 (1) adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.
- Art. 17 Adopt measures to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.
- Art. 20 Adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.
- Art. 21 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:
  - The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;
  - The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.
- Art. 27 (1) Adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Art. 15 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- **The promise, offering or giving, to a public official, directly or indirectly, of**

an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

- **The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.**

Relevant sections of the Prevention of Corruption Act establishes such acts as offences:

- Corruptly giving, promising or offering gratification as an inducement or reward is an offence under section 5(b) and 6(b) of the PCA. In addition, under section 8 of the PCA, where gratification is offered to a person in the employment of the government department or public body from a person who has or seeks to have any dealing with the government department or public body, that gratification is deemed to have been paid corruptly unless the contrary is proved.
- Corruptly soliciting, receiving or agreeing to receive of gratification as an inducement or reward is an offence under section 5(a) and 6(a) of the PCA. In addition, under section 8 of the PCA, where the gratification is received by a person in the employment of the government department or public body from a person who has or seeks to have any dealing with the government department or public body, that gratification is deemed to have been paid corruptly unless the contrary is proved.

Art. 16 (1) adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

Extraterritorial jurisdiction of corruption offences is covered under section 37(1) of the PCA which states that the provisions of the PCA have effect, in relation to citizens of Singapore, outside as well as within Singapore; and where an offence under the PCA is committed by a citizen of Singapore in any place outside Singapore, he may be dealt with in respect of that offence as if it had been committed within Singapore.
If the bribery of the official of the foreign country takes place within Singapore, then both parties to the bribe can be prosecuted in Singapore under the PCA.

Art. 17 Adopt measures to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

Under section 409 of the Penal Code, public officials are liable for criminal prosecution for misappropriating/embezzlement/diversion of public resource for personal use. Public servants guilty of converting to his own use any public resources or dishonestly uses or dispose of any property in violation of any law can be punished with imprisonment for life, up to 20 years' imprisonment and also liable to fine.
Under Section 410 of the Penal Code, it is also an offence to receive stolen property and anyone who dishonestly receives stolen or misappropriated government or public funds can be held liable for an offence under this section.

Art. 20 Adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

Under section 24 of the Prevention of Corruption, pecuniary resources or property disproportionate to one's known wealth or source of income can be taken into account by a court as corroborating the evidence of a witness in a corruption trial.

Art. 21 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

- The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;
- The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

Corruptly giving, promising or offering gratification as an inducement or reward is an offence under section 5(b) and 6(b) of the PCA and is also applicable to economic and commercial activities. Corruptly soliciting, receiving or agreeing to receive of gratification as an inducement or reward is an offence under section 5(a) and 6(a) of the PCA and is also applicable to economic and commercial activities.

Art. 27 (1) Adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

Under Section 30 of the Prevention of Corruption Act, anyone who abets a corruption offence is deemed to have committed a corruption offence. Under Section 107 of the Penal Code, a person is culpable of abetting any offence when he carries out any of the following :

- Instigates a person to commit an offence;
- Intentionally aids, either by an act or illegal omission, the doing of an offence; or
- Engage with one or more person in a conspiracy to the doing of a thing

Under Section 31 of the Prevention of Corruption Act, any person who is a party to a criminal conspiracy to commit a corruption offence is also liable to be punished with the punishment provided for the corruption offence. A person is deemed to be a party to a criminal conspiracy when, he and another person or more, agrees to do or cause to be done a corrupt act.

I.C Preventing Money-Laundering

RELEVANT UNCAC PROVISIONS

- Art. 14(1) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering.
- Art. 14(2) Implement feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders.
- Art. 14(3) Implement appropriate and feasible measures to require financial institutions, including money remitters, to: (a) include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator; (b) maintain such information throughout the payment chain; and (c) apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Art. 14(1) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering.

The Monetary Authority of Singapore (MAS) is the central bank and integrated regulator of the financial sector. MAS exercises supervisory oversight responsibilities over the banking, insurance, securities and futures industries, money changers, remittance business and trust companies through the Monetary Authority of Singapore Act, Banking Act, Finance Companies Act, Insurance Act, Securities and Futures Act, Money-Changing and Remittance Business Act, Trust Companies Act and Financial Advisers Act. MAS is empowered under Section 27B of the MAS Act to issue directions to financial institutions, including the legal obligations to take preventive measures to help mitigate the risk of Singapore's financial system being used for money laundering (ML)/terrorist financing (FT). Any such directions or regulations apply to all entities and institutions that are subject to MAS supervision and regulation.
Directions and regulations issued under Section 27B of the MAS Act are legally enforceable. Institutions that fail or refuses to comply shall be guilty of an offence and liable on conviction to a fine not exceeding $1million, and in the case of a continuing offence to a further fine of $100,000 for everyday during which the offence continues after conviction.

Prevention of Money Laundering and Countering the Finance of Terrorism
All financial institutions, including money changers and remittance companies, operating in Singapore are required to institute rigorous anti-money laundering procedures under the Notices on the Prevention of Money Laundering and Countering the Financing of Terrorism, issued by the Monetary Authority of Singapore (MAS). These procedures, which are aligned with international standards and best practices, are applicable toward all clients of financial institutions, regardless of whether these are individuals, companies, partnerships or trusts; and impose, inter alia obligations on financial institutions to thoroughly identify and know their customers, including the beneficial owners, as well as to identify the customer's source of funds to satisfy themselves that they are not proceeds of crime.
Financial institutions are also required to monitor and report all suspicious transactions if they know or have reasonable grounds to suspect that any transaction, including that related to property, is connected with money laundering or terrorist financing. These procedures are applied to both local as well as foreign financial institutions.

MAS continuously monitors financial institutions' compliance with the Notices through both on-site inspections and off-site reviews. Financial institutions found in breach of the Notices will be subject to regulatory sanctions.

Art. 14(2) Implement feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders.

Declaration system

Under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (CDSA), any person who moves into or out of Singapore, cash and bearer negotiable instruments (CBNI) above SGD 30,000 or its equivalent in a foreign currency must report such movement (section 48C). This requirement applies to travelers as well as those who move cash via courier companies, containerised cargo and post. Additionally, any person within Singapore who receives CBNI exceeding the threshold amount from overseas is required to file a report (section 48E). Anyone found guilty of contravening the cash reporting requirements is liable to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 3 years or to both.
All information collected through such cash reporting is sent to the Suspicious Transactions Reporting Office (STRO), the financial intelligence unit (FIU) of Singapore.
Authorized officers and immigration officers are empowered under section 48F of the CDSA to require any traveller who is arriving in, or leaving Singapore to declare whether or not he is carrying any CBNI, to complete the Cross-Border Declaration Form, and to answer any questions with respect to the CBNI (e.g. the origin, source, destination and purpose). The traveller is obliged to complete the form and provide full and accurate information to the requesting officer.

In cases where ML or TF or a false declaration is suspected, the competent authorities are able to stop or restrain the CBNI for a reasonable time to ascertain whether evidence of ML/FT may be found. The police officers deployed at the checkpoints are authorised to investigate any suspicion of ML/TF offences pursuant to the CDSA and Terrorism (Suppression of Financing) Act (TSOFA). The police officers also have the power to seize such monies (section 35 of the Criminal Procedure Code) on suspicion of the commission of an offence. An authorised officer or immigration officer may also seize the CBNI in the event of a false declaration under section 48F of the CDSA.

Disclosure system

Complementing the declaration system is a disclosure system which is implemented on a targeted basis at border checkpoints. It is based on the integration of immigration officers and police officers, and their coordinated use of customs, immigration and general police powers.

Officers of the Immigration and Checkpoint Authority (ICA) have extensive powers under the Immigration Act and Customs Act to stop and check persons at the checkpoints to ensure that the movement of persons, goods and conveyance is legitimate. ICA acts on both intelligence and suspicion to conduct closer examinations of persons, goods and conveyances. It also employs data-mining and deploys sophisticated x-ray, scanning and other technological equipment to detect items of security interest, contraband and prohibited items. When a person has been referred for closer examination and a sizable amount of CBNI is found on the person, the person is questioned by the ICA officers with a view to determining the person's identity and/or intent.

Examples of the relevant powers exercisable by ICA officers include:

- Asking any person arriving or leaving Singapore questions concerning his/her identity, nationality, occupation, criminal history and means of support (section 28 Immigration Act), and examining goods (including CBNI) being brought into or taken out of the country (section 108 of Customs Act).
- Stopping, searching and seizing in relation to persons who are entering or leaving Singapore (section 109 of Customs Act).
- Arresting without a warrant, and searching any person, premises or vehicle if there is reason to believe that any evidence may be found of the commission of an offence under the Immigration Act (section 51) or Customs Act (section 112).

If a false statement is made or there is suspicion about the person and/or his intentions, ICA officers will refer the person to the police officers who are present and deployed at the checkpoints for further investigation.

Art. 14(3) Implement appropriate and feasible measures to require financial institutions, including money remitters, to: (a) include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator; (b) maintain such information throughout the payment chain; and (c) apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

MAS Notices 626, 1014 (banks, merchant banks) Para. 9.3; MAS Notice 824 (finance companies) Para. 8.3; MAS Notice 3001 (money changers and remittance agents) Para. 7.3 require ordering financial institutions to identify and verify the identity of the originator, and record adequate details of the wire transfer so as to permit its reconstruction. In addition to the identity of the originator, such details must include the date of the wire transfer; the type and amount of currency involved; the value date and details of the beneficiary of the transaction (i.e. the person to whom or for whose benefit the funds are being sent); and the beneficiary institution (i.e. the fi-

nancial institution that will be receiving the funds on the account of the beneficiary). In a cross-border wire transfer exceeding $2,000, the ordering financial institution must include the following details in the message or payment instruction that accompanies or relates to the wire transfer: the originator's name, account number and the originator's address (or, alternatively, a unique identification number, or date and place of birth) [MAS Notices 626, 1014 (banks, merchant banks) Para. 9.4; MAS Notice 824 (finance companies) Para. 8.4; MAS Notice 3001 (money changers and remittance agents) Para. 7.4]
Financial institutions that are intermediaries in the wire transfer payment chain are required to maintain all the required originator information in passing the message or payment instruction. [MAS Notices 626, 1014 (banks, merchant banks) Para. 9.7; MAS Notice 824 (finance companies) Para. 8.7; MAS Notice 3001 (money changers and remittance agents) Para. 7.7]

Financial institutions that receive the funds on the account of the wire transfer beneficiary are required to implement appropriate internal risk-based policies, procedures and controls for identifying and handling in-coming wire transfers that are not accompanied by complete originator information. [MAS Notices 626, 1014 (banks, merchant banks) Para. 9.6; MAS Notice 824 (finance companies) Para. 8.6; MAS Notice 3001 (money changers and remittance agents) Para. 7.6]

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

Singapore agencies involved in the implementation of our cash courier regime, including the FIU and enforcement agencies, have shared our experience with other countries at various fora. Such fora include:

- APEC workshops on the cash courier regime in 2008 and 2009; and
- United Nations Counter Terrorism Committee Executive Directorate (UNCTED) Workshop on cash couriers in 2011;
- ASEAN AML/CFT Workshop which CAD organised in 2011.

II. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO APEC INEGRITY STANDARDS (CROSS CHECK WITH I.A. ABOVE)

LEADERS' AND MINISTERS' COMMITMENTS

- Santiago Commitment/COA: Strengthen Measures to Effectively Prevent and Fight Corruption and Ensure Transparency by Recommending and Assisting Member Economies to:
- Establish objective and transparent criteria that assure openness for merit, equity, efficiency for the recruitment of civil servants, and promote the highest levels of competence and integrity;
- Adopt all necessary measures to enhance the transparency of public administration, particularly with regard to organization, functioning and decision-making processes;
- Develop and implement appropriate public financial disclosure mechanisms or codes of conduct for senior-level public officials [SOM III: Guidelines];

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Establish objective and transparent criteria that assure openness for merit, equity, efficiency for the recruitment of civil servants, and promote the highest levels of competence and integrity;
Adopt all necessary measures to enhance the transparency of public administration, particularly with regard to organization, functioning and decision-making processes; Develop and implement appropriate public financial disclosure mechanisms or codes of conduct for senior-level public officials [SOM III: Guidelines];

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Establish objective and transparent criteria that assure openness for merit, equity, efficiency for the recruitment of civil servants, and promote the highest levels of competence and integrity;

The Civil Service recruitment policies and processes are designed based on the following principles:

- **Meritocracy: The best person is recruited for the job through open competition on the basis of merit; and**

- **Impartiality and incorruptibility: Selection is based on objective and defensible criteria, and all candidates who meet our requirements should be considered for appointment**

Selection of candidates is a collective decision by an interview panel that comprises at least 3 officers who are impartial, independent and unrelated to the candidates.
The appraisal system for civil servants is designed bearing in mind the need to be fair, rigorous and objective. The Ministry ranks and assesses the officers' potential and performance and recommends deserving officers for promotion.
There is also an appeals mechanism in place as a further check that the decisions of the promotion authorities are fair.
The remuneration of civil servants is reviewed regularly, and benchmarked to the private sector, for purposes of talent attraction and retention.
Anti-corruption education and outreach efforts are spearheaded by CPIB who hold talks in various agencies. Anti-corruption messages are also embedded in induction programmes for new officers joining the Civil Service, and in programmes that deal with the ethos and values of the Civil Service.

Adopt all necessary measures to enhance the transparency of public administration, particularly with regard to organization, functioning and decision¬making processes;

The Singapore Civil Service is governed by the Public Service Commission which consists of a Board of prominent non-civil servants appointed by the President. Under the Singapore constitution, it is responsible for the appointment, promotion, transfer, dismissal and exercise of disciplinary matters over public officers.
The Singapore Civil Service constantly seeks to improve service quality and service delivery to the members of the public. Embodying this is the PS21

movement which was launched in 1995 to promote change, work improvement and innovation, and ensure that the Public Service remains relevant to its stakeholders. The PS21 movement aims to build a change-ready Public Service through the inculcation of 5 key cultural behaviours - Critical Thinking, Continual Learning, Customer-Centricity, Collaboration and Effective Communication. The 5Cs are critical capabilities and capacities that the Public Service needs to develop in order to drive Public Service Transformation, as well as a culture of change and improvement amongst our public officers.

Centrally the government maintains a multi-tier platform to facilitate access to the government by members of the public. At the whole-of-government level, the government solicit feedback from engages the Citizenry in its policy making and review process. These are done through programme such as REACH programme, cut-waste panel, etc. Government Departments and Statutory Boards are also required to maintain active feedback channels for members of the public. Senior officers are appointed as Quality Service Managers so that members of the public can have access to senior management of each department should they feel aggrieved by any decision made by any public officers.

Develop and implement appropriate public financial disclosure mechanisms or codes of conduct for senior-level public officials [SOM III: Guidelines];

All Civil Servants are required to declare their assets on a yearly basis. These include properties, shares in private and non-listed company and any other form of investment belonging to the civil servant, his or her spouse and children. In addition, Civil Servants are required to submit a declaration of indebtedness on a yearly basis. These are to be submitted to their respective organizations and Heads of Department.
Under the Parliament (Privileges, Immunities and Powers) Act, an elected Member of Parliament shall not participate in the discussion of any matter in the House in which he has a direct personal pecuniary interest without disclosing the extent of that interest first. In addition, he cannot vote on such a matter. There are other provisions relating to the offer of gifts, fees and compensation, abuse of privilege and dishonourable conduct.
The Political Donation Act also prescribed rules requiring candidates standing for political election to declare donations they received.

III. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO SAFE HAVENS (CROSS CHECK WITH I.C. ABOVE):

LEADERS' AND MINISTERS' COMMITMENTS

- **Santiago Commitment/COA: Deny safe haven to officials and individuals guilty of public corruption, those who corrupt them, and their assets:**
- Promote cooperation among financial intelligence units of APEC members including, where appropriate, through existing institutional mechanisms.
- Encourage each economy to promulgate rules to deny entry and safe haven, when appropriate, to Officials and individuals guilty of public corruption, those who corrupt them, and their assets.
- Implement, as appropriate, the revised Financial Action Task Force (FATF) 40

Recommendations and FATF's Special Recommendations (Santiago Course of Action)
- Work cooperatively to investigate and prosecute corruption offenses and to trace freeze, and recover the proceeds of corruption (Santiago Course of Action)
- Implement relevant provisions of UNCAC. These include:
  - o Art. 14 (Money laundering)
  - o Art. 23 (Laundering of Proceeds of Crime)
  - o Art. 31 (Freezing, seizure and confisction)
  - o Art. 40 (Bank Secrecy)
  - o Chapter V (Asset Recovery)

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Promote cooperation among financial intelligence units of APEC members including, where appropriate, through existing institutional mechanisms.

As a member of the Financial Action Task Force (FATF), the Asia/Pacific Group on Money Laundering (APG) and the Egmont Group of FIUs, Singapore is keen to play our part to promote international cooperation. Our FIU, STRO, participates regularly and actively in discussions at FATF, APG and Egmont. In July 2010, Singapore also hosted the 13th Annual Meeting and 9th Annual Technical Assistance and Training Forum of the APG. The meeting provided a platform for high-level discussion amongst relevant national authorities, including FIUs, on how to fight the ML/TF threats.
STRO actively exchanges financial intelligence with its MOU partners. As of Jan 2012, STRO has concluded MOUs with FIUs of 9 APEC member countries (Australia, Canada, Hong Kong, Japan, South Korea, Malaysia, Mexico, Russia and the United States).

Encourage each economy to promulgate rules to deny entry and safe haven, when appropriate, to Officials and individuals guilty of public corruption, those who corrupt them, and their assets.

Those convicted of public corruption are considered "prohibited immigrants" under the Immigration Act if they satisfy the definitions under section 8(3). In particular, section 8(3)(d) lists the following as a prohibited immigrant:
"any person who —
(i) has been convicted in any country or state of an offence for which a sentence of imprisonment has been passed for any term;
(ii) has not received a free pardon; and
(iii) by reason of the circumstances connected with that conviction is deemed by the Controller to be an undesirable immigrant".

Prohibited immigrants under the Immigration Act are denied from entering Singapore, subject to any exemption granted under section 56 of the Act or unless he is in possession of a valid pass in that behalf issuable to a prohibited immigrant under the regulations. Section 8 of the Act allows ICA to deem a foreigner as a prohibited immigrant and remove a person from Singapore. A person who has been removed from Singapore would be required to seek the written permission of ICA before he can re-enter Singapore. These persons would also be refused entry into Singapore should they attempt to enter Singapore subsequently without ICA's permission. In addition, pursuant to section 9(1)(a)(i) of the Act, the Minister of Home Affairs may by order prohibit, either for a stated period or permanently, the entry or re-entry into Singapore of any person or class of persons where he thinks it expedient to do so in the interests of public security or by reason of any economic, industrial, social, educational or other conditions in Singapore.

Implement, as appropriate, the revised Financial Action Task Force (FATF) 40 Recommendations and FATF's Special Recommendations (Santiago Course of Action)

Singapore has always maintained a strong stance against financial crime. As an international financial centre, we operate a strict regime that is in line with FATF standards and international best practices.
Singapore fared well in the last FATF assessment in 2008, receiving Compliant or Largely Compliant for 43 out of the 49 FATF Recommendations and Special Recommendations.
We remain committed to maintaining the rigor in our regime and will be implementing appropriate regime changes in light of FATF's revised recommendations.

Work cooperatively to investigate and prosecute corruption offenses and to trace freeze, and recover the proceeds of corruption (Santiago Course of Action)

Corruption investigation and the recovery of corrupt proceeds are handled by the CPIB. Provisions in both the Mutual Assistance in Criminal Matters Act (MACMA) and the Corruption, Drug Trafficking And Other Serious Crimes (Confiscation Of Benefits) Act (CDSA) allows Singapore to render legal assistance to a foreign state. Foreign requests for assistance can be made to the central authority, the Attorney-General Chambers, which will vet and process the request. Requests which satisfy the provisions in the MACMA and CDSA will then be channeled to CPIB.

Implement relevant provisions of UNCAC. These include:
- **o Art. 14 (Money laundering)**
- **o Art. 23 (Laundering of Proceeds of Crime)**
- **o Art. 31 (Freezing, seizure and confiscation)**

- **Art. 40 (Bank Secrecy)**
- **Chapter V (Asset Recovery)**

Article 14(2) on measures to detect andmonitor movement of CBNI See above response for Article 14(2)

Article 14(b) - establishment of FIU
The FIU of Singapore, STRO, was established in 2000 to collect, analyse and disseminate financial intelligence.

Article 14(5) - develop and promote global, regional, subregional and bilateral cooperation among law enforcement authorities CAD contributes actively to discussions amongst law enforcement agencies on how to fight the money laundering threats at various fora, including meetings of the Financial Action Task Force (FATF) and the Asia/Pacific Group on Money Laundering (APG). Singapore's FIU, the Suspicious Transactions Reporting Office (STRO) under CAD, also regularly attends meetings of the Egmont Group. In July 2010, Singapore hosted the 13th Annual Meeting and 9th Annual Technical Assistance and Training Forum of the APG. The meeting provided a platform for high-level discussion amongst relevant national authorities, including law enforcement agencies and FIUs, on how to fight the ML/TF threats.
At the bilateral level, CAD proactively exchanges information with its foreign counterparts to detect and investigate money laundering. CAD has access to the mechanisms of the International Criminal Police Organisation (Interpol), of which the Singapore Police Force (SPF) is an active member, to exchange information with its foreign counterparts. In this respect, a key conduit is the I-24/7 system which facilitates communication amongst Interpol's member states on matters related to criminal Investigations, training and conferences. In addition, STRO is able to exchange information spontaneously with its MOU partners and does so on a regular basis. As of Jan 2012, STRO has concluded MOUs with FIUs of 9 APEC member countries (Australia, Canada, Hong Kong, Japan, South Korea, Malaysia, Mexico, Russia and the United States).

Art. 23 (Laundering of Proceeds of Crime)
Singapore's main anti-money laundering legislation is the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (CDSA). Under The CDSA, the following are offences:
Under section 46 (1) and 47(1), any attempts to conceal or disguises any property which (in whole or in part, directly or indirectly) represents one's benefits from drug trafficking or from criminal conduct; or when one attempts to convert or transfer that property or remove it from Singapore is an offence. Under sections 46(1) and 47(1), it is also an offence to acquire, possess or use property which represents one's benefit from drug trafficking or criminal conduct. Sections 43(1) and 44(1) also provide for the offences of assisting another to retain benefits of drug trafficking or criminal conduct.
Under sections 46(3) and 47(3) of the CDSA, any person who, knowing or having reasonable grounds to believe that any property (in whole or in part, directly or indirectly) represents another person's benefits from drug trafficking or criminal Conduct, acquires that property is also guilty of an offence. The CDSA was amended in Feb 2010 to remove from the offence of acquiring any property representing another person's proceeds of crime the requirement that the acquisition should be made for no or inadequate consideration. These amendments have made it clear that an offence is committed even if a person acquires the property at fair value, if he does so knowing or having reasonable grounds to believe that the property represents the proceeds of crime of another person.
Under section 46(2) and 47(2), it is also an offence to abet an person to commit any of the above offences.
The list of offences which constitutes a criminal conduct (or 'predicate offence') is found in schedule 2 of the CDSA. Offences under the Prevention of Corruption Act are deemed to be 'criminal conduct'. In line with FATF's revised recommendations, tax offences will be included in the list of predicate offences.

Art. 31 (Freezing, seizure and confiscation)
Under section 15 & 16 of the CDSA, a court may issue a Restraint Order (or freezing order) to prohibit a person from dealing with any 'realisable property'. A Restraint Order may only be issued by the High Court where: (a) proceedings have been instituted against the defendant for a drug trafficking offence or a serious offence (ie Criminal Conduct); (b) the proceedings have not been concluded; and (c) the Court is satisfied that there is reasonable cause to believe that the defendant has derived benefits from a predicate offences.
Under Section 15-18 of the CDSA, the High Court may impose on Charging Order on a Realisable Property to prohibit any person from dealing with any realisable property.
Under section 4,5 and 13 of the CDSA, a Confiscation Order (or a forfeiture order) is an order issued by the court when a person is convicted of a ML predicate offence, to confiscate the benefits derived by the defendant from these offences.

Art 40 - Banking Secrecy
Singapore has provisions for banks to maintain confidentiality of customers' information. However, we do not allow banking confidentiality to be used to shield criminal activity. Section 47 of the Banking Act allows disclosure of information under certain circumstances, which includes when disclosure is necessary for compliance with an order or request made under any specified written law to furnish information, for the purposes of an investigation or prosecution, of an offence alleged or suspected to have been committed under any written law.

Accordingly, banking secrecy law is expressly lifted for the combating of money laundering and terrorist financing. For instance, there is a duty to report the suspicion of ML (s.39(1) CDSA) and it is expressly provided that such reporting will not be treated as a breach of any restriction upon disclosure imposed by law (including financial institution secrecy law) (s.39(6) CDSA). There is also a duty to report the suspicion of FT (s.8(1) Terrorism (Suppression of Financing) Act - "TSOFA") and it is expressly provided that no criminal or civil proceeding (including any proceeding arising from breach of financial institution secrecy law) will lie against a person for reporting on terrorist financing (s.8(5) TSOFA).

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

FATF revised its 40+9 Recommendations in Feb 2012.
Singapore plans to review existing legislation and policies to implement the revised FATF standards.

IV. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO PRIVATE SECTOR CORRUPTION:

LEADERS' AND MINISTERS' COMMITMENTS

- Develop effective actions to fight all forms of bribery, taking into account the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or other relevant anticorruption conventions or initiatives.
- Adopt and encourage measures to prevent corruption by improving accounting, inspecting, and auditing standards in both the public and private sectors in accordance with provisions of the UNCAC.
- Support the recommendations of the APEC Business Advisory Council (ABAC) to operate their business affairs with the highest level of integrity and to implement effective anticorruption measures in their businesses, wherever they operate.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Develop effective actions to fight all forms of bribery, taking into account the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or other relevant anticorruption conventions or initiatives.

Under the Prevention of Corruption Act, CPIB is provided with extra-territorial power to investigate Singaporeans involved in overseas corruption. This includes Singaporeans from private sector enterprises involved in the bribing of foreign officials.
If the bribery of the official of the foreign country takes place within Singapore, then both parties to the bribe can be prosecuted in Singapore under the PCA.

Adopt and encourage measures to prevent corruption by improving accounting, inspecting, and auditing standards in both the public and private sectors in accordance with provisions of the UNCAC.

With regard to the public sector, the Auditor-General's Office (AGO) carries out audits of government ministries and statutory boards. AGO's audit procedures are in line with requirements of international auditing standards.
In the private sector, the Corporate Governance Council carried out a comprehensive review of the Code of Corporate and on 22 November 2011 submitted its recommendations on proposed revisions to the Code to the Monetary Authority of Singapore for consideration.
Companies listed on the Singapore Stock Exchange are also required under the Singapore Exchange Listing Rules to disclose their corporate governance practices and give explanations for deviations from the Code in their annual reports for Annual General Meetings.
Under the Accountants Act, ACRA conducts a Practice Monitoring Programme on selected auditors. This is to ensure their audit work complies with the prescribed standards, methods, procedures and other requirements. Auditors who fail the review can be subject to a variety of sanctions, including having their registration cancelled or suspended.

Support the recommendations of the APEC Business Advisory Council (ABAC) to operate their business affairs with the highest level of integrity and to implement effective anticorruption measures in their businesses, wherever they operate.

Since the 1960s Singapore's anti-corruption law has outlawed corruption in private businesses. The Singapore Courts also take a serious view of corruption in the private sector and where necessary, deterrent sentences are imposed on private sector cases as well.

The Singapore Business Federation, the apex Business Chambers in Singapore, supports ABAC's call to operate their business with the highest level of integrity. The various trade federations and business chambers also adopt and subscribe to various codes of business conduct such as the International Chambers of Commerce and the United Nations Global Compact.
Corruption in commercial entities is listed as an offence punishable under the Prevention of Corruption Act, Cap 241.

V. ENHANCING REGIONAL COOPERATION

LEADERS' AND MINISTERS' COMMITMENTS

- Santiago Commitment/COA: Strengthen Cooperation Among APEC Member Economies to Combat Corruption and Ensure Transparency in the Region:
- Promote regional cooperation on extradition, mutual legal assistance and the recovery and return of proceeds of corruption
- Afford one another the widest measure of mutual legal assistance, in investigations, prosecutions and judicial proceedings related to corruption and other offences covered by the UNCAC.
- Designate appropriate authorities in each economy, with comparable powers on fighting corruption, to include cooperation among judicial and law enforcement agencies and seek to establish a functioning regional network of such authorities.
- Sign bilateral and multilateral agreements that will provide for assistance and cooperation in areas covered by the UNCAC. (Santiago Course of Action) These include:
    - o Art. 44 - Extradition
    - o Art. 46 - Mutual Legal Assistance
    - o Art. 48 - Law Enforcement Cooperation
    - o Art. 54 -- Mechanisms for recovery of property through international cooperation in confiscation
    - o Art. 55 - International Cooperation for Purposes of Confiscation

- Work together and intensify actions to fight corruption and ensure transparency in APEC, especially by means of cooperation and the exchange of information, to promote implementation strategies for existing anticorruption and transparency commitments adopted by our governments, and to coordinate work across all relevant groups within APEC (e.g., SOM, ABAC, CTI, IPEG, LSIF, and SMEWG).
- Coordinate, where appropriate, with other anticorruption and transparency initiatives including the UNCAC, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, FATF, the ADB/OECD Anticorruption Action Plan for the Asia Pacific region, and Inter-American Convention Against Corruption.
- Recommend closer APEC cooperation, where appropriate, with the OECD including a joint APEC-OECD seminar on anticorruption, and similarly to explore joint partnerships, seminars, and workshops with the UN, ADB, OAS, the World Bank, ASEAN, and The World Bank, and other appropriate multilateral intergovernmental organizations.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Afford one another the widest measure of mutual legal assistance, in investigations, prosecutions and judicial proceedings related to corruption and other offences covered by the UNCAC.
Sign bilateral and multilateral agreements that will provide for assistance and cooperation in areas covered by the UNCAC. (Santiago Course of Action) These include:

Art. 44 - Extradition
Art. 46 - Mutual Legal Assistance
Art. 48 - Law Enforcement Cooperation
Art. 54 -- Mechanisms for recovery of property through international cooperation in confiscation Art. 55 - International Cooperation for Purposes of Confiscation

Art. 44 - Extradition

Singapore subscribes to the London Scheme of Extradition between Commonwealth countries. Under this scheme, extradition to and from 40 declared Commonwealth countries and territories is possible, without the need for any treaty. Singapore also has bilateral extradition treaties with the USA, Hong Kong, Germany and Indonesia. The extradition treaty with Indonesia is not in force yet.

Art 46 Mutual Legal Assistance & Art 48 Law Enforcement Cooperation

Mutual Assistance in Criminal Matters Act (MACMA) was amended in 2006 to allow assistance to be provided to a foreign country, in the absence of a treaty, if the requesting country gives an undertaking that it will comply with a future request by Singapore for similar assistance involving a similar offence. Corruption offences are covered under MACMA and assistance may therefore be rendered to foreign countries with respect to corruption offences, subject to the provisions of the Act. All requests

to Singapore for extradition and MLA are handled by the Attorney-General as the central authority for Singapore.

Art. 54 -- Mechanisms for recovery of property through international cooperation in confiscation
Art. 55 - International Cooperation for Purposes of Confiscation

The MACMA contains detailed provisions on MLA regarding proceeds of crime, including the requirements and procedure for executing foreign requests to restrain or confiscate proceeds of crime. The value of direct or indirect proceeds is covered under the MACMA. The list of crimes for which the proceeds may be confiscated can be found in the schedule of Corruption, Drug Trafficking And Other Serious Crimes (Confiscation Of Benefits) Act (CDSA). Generally any foreign offenses that give rise to such proceeds must include conduct which, if it had occurred in Singapore, would amount to a Singaporean offense listed in the Second Schedule of the CDSA.
The Singapore Government may realize confiscated property and return the proceeds to a requesting state unconditionally (less expenses incurred during the recovery of the property).

Designate appropriate authorities in each economy, with comparable powers on fighting corruption, to include cooperation among judicial and law enforcement agencies and seek to establish a functioning regional network of such authorities

Work together and intensify actions to fight corruption and ensure transparency in APEC, especially by means of cooperation and the exchange of information, to promote implementation strategies for existing anticorruption and transparency commitments adopted by our governments, and to coordinate work across all relevant groups within APEC (e.g., SOM, ABAC, CTI, IPEG, LSIF, and SMEWG).

The Corrupt Practices Investigation Bureau (CPIB) of Singapore is empowered to investigate corrupt offences. CPIB is also an active member within the international anti-corruption community and regularly represents Singapore at various international anti-corruption platforms/agreements. These include:

(a) UNCAC
- Details listed in relevant sections of reporting template

(b) APEC-ACT
- Since the inception of the APEC ACT, Singapore has participated in all APEC sponsored workshops and when requested would lend its expertise and knowledge. In 2009, CPIB took on the Chairmanship of ACT and organised a workshop on 'Governance and Anti-Corruption'. It supports the work of the other APEC fora through the ACT and in particular work with ABAC.

(c) G20 Anti-Corruption Working Group
- CPIB/Singapore involved in working group as invited country

(d) South-East Asia Parties Against Corruption (SEA-PAC)
- Signatory to multilateral Memorandum of Understanding (MOU) for Combating and Preventing Corruption amongst anti corruption agencies in ASEAN
- Part of the group as one of the founding members since 2004

(e) ADB/OECD Anti-Corruption Initiative for Asia and the Pacific
- Member of the steering committee
- In 2008 Singapore hosted the 12th Steering Group meeting of the ADB/OECD Anti-Corruption Initiative for Asia and jointly conducted 6th Regional Anti-Corruption Conference for Asia and the Pacific Singapore with ADB and OECD.
- Participation in thematic review on Criminalisation of Bribery in Asia and the Pacific (2009/2010) and the upcoming Thematic Review (in 2012-2013) on Corporate Compliance, Internal Controls, Ethics and Tax Deductibility of Bribes.

(f) International Association of Anti-Corruption Authorities (IAACA)
- Director/CPIB is member of IAACA Executive Committee
- CPIB hosted IAACA Experts' Group meeting in January 2011 which met with the objective to formulate the IAACA work plan.

Other examples of co-operation
- Signed bilateral MOU with Government Inspectorate of Vietnam in 2009 which has a generic scope for cooperation; covering the areas of training, exchange of best practices and technical assistance.
- Singapore has hosted a series of Anti-Corruption Expertise (ACE) workshops for anti-corruption practitioners around the world. The most recent was the 3rd ACE Workshop in 2008 which brought together more than 60 officials from 20 countries around the world.
- Participation in the FIFA/INTERPOL Initiative against match-fixing and corruption in football via our attendance at the Interpol Experts Meeting in January 2012 to share experiences and challenges in related areas and define possible training programme.
- Speaking engagements involving senior management in CPIB to exchange information/expertise; e.g., Director/CPIB's speaking engagement at the upcoming meeting of the International Corruption Hunters Alliance in Washington, D.C. in June 2012.

VI. OTHER APEC ACT LEADERS' AND MINISTERS' COMMITMENTS

LEADERS' AND MINISTERS' COMMITMENTS

- **2005**: Ministers encouraged all APEC member economies **to take all appropriate steps towards effective ratification and implementation, where appropriate, of the United Nations Convention against Corruption (UNCAC)**. Ministers encouraged relevant APEC member economies to make the UNCAC a major priority. They urged all member economies to submit brief annual progress reports to the ACT Task Force on their APEC anti-corruption commitments, including a more concrete roadmap for accelerating the implementation and tracking progress. (See Section I Above, UNCAC)
- **2006**: Ministers underscored their commitment **to prosecute acts of corruption, especially high-level corruption by holders of public office and those who corrupt them**. In this regard, Ministers commended the results of the Workshop on Denial of Safe Haven: Asset Recovery and Extradition held in Shanghai in April 2006. Ministers agreed to consider developing domestic actions, in accordance with member economy's legislation, to deny safe haven to corrupt individuals and those who corrupt them and prevent them from gaining access to the fruits of their corrupt activities in the financial systems, including by implementing effective controls to deny access by corrupt officials to the international financial systems.
- **2007**: We endorsed a model **Code of Conduct for Business, a model Code of Conduct Principles for Public Officials and complementary Anti-Corruption Principles for the Private and Public Sectors**. We encouraged all economies to implement these codes and welcomed agreement by Australia, Chile and Viet Nam to pilot the Code of Conduct for Business in their small and medium enterprise (SME) sectors. (AELM, AMM)
- **2008**: We commended efforts undertaken by member economies to develop comprehensive anti-corruption strategies including efforts to restore public trust, ensure government and market integrity. We are also committed **to dismantle transnational illicit networks and protect our economies against abuse of our financial system by corrupt individuals and organized criminal groups through financial intelligence and law enforcement cooperation related to corrupt payments and illicit financial flows**. We agreed to further strengthen international cooperation **to combat corruption** and money laundering in accordance with the Financial Action Task Force standards. International legal cooperation is essential in the prevention, investigation, prosecution and punishment of serious corruption and financial crimes as well as the recovery and return of proceeds of corruption. (AELM, AMM)
- **2009**: We welcome the Anti-Corruption and Transparency Experts' Task Force's Singapore **Declaration on Combating Corruption, Strengthening Governance and Enhancing Institutional Integrity, as well as the APEC Guidelines on Enhancing Governance and Anti-Corruption**. We encourage economies to implement measures to give practical effect to the Declaration and Guidelines. (AMM)
- **2010**: We agreed to leverage collective action **to combat corruption and illicit** trade by promoting clean government, fostering market integrity, and strengthening relevant judicial and law enforcement systems. We agreed to deepen our cooperation, especially in regard to discussions on achieving more durable and balanced global growth, increasing capacity building activities in key areas such as combating corruption and bribery, denying safe haven to corrupt officials, strengthening asset recovery efforts, and enhancing transparency in both public and private sectors. We encourage member economies, where applicable, to ratify the UN Convention against Corruption and UN Convention against Transnation**al Organized Crime and to take measures to implement their provisions, in accordance with economies legal frameworks to dismantle corrupt and illicit networks across the Asia Pacific region**. (AELM, AMM)

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

- CPIB/Singapore sees the current applicable and accepted global anti-corruption standard/norms are those agreed upon and enshrined under UNCAC. Singapore signed the UNCAC on 11th November 2005. With the legal and procedural framework in place to implement the Convention, Singapore ratified the UNCAC on 6th November 2009 and the UNCAC took effect for Singapore as of 5th December 2009.
- Singapore is a regular participant in various UNCAC meetings and processes, including the UNCAC Implementation Review mechanism. In this regard, Singapore was a reviewing state party for Argentina in the first year of the first cycle (2010/2011) of the UNCAC review mechanism and is also a reviewing state party for El Salvador in the second year of the current review cycle (2011/2012). Singapore is due for UNCAC implementation review in the fourth year (2013/2014) of the current review cycle.

ECONOMY: Chinese Taipei
CALENDAR YEAR: 2012
LAST UPDATED: April 30, 2012

LEADERS' AND MINISTERS' COMMITMENTS

• **2010:** We agreed to enhance our efforts to improve transparency and eliminate corruption, including through regular reporting via ACT, and other relevant fora on economies' progress in meeting APEC Leaders' commitments on anti-corruption and transparency.
• **2006:** Ministers endorsed APEC 2006 key deliverables on Prosecuting Corruption, Strengthening Governance and Promoting Market Integrity and encouraged member economies to take actions to realize their commitments. Ministers also encouraged all economies to complete their progress reports on the implementation of ACT commitments by 2007. Ministers welcomed APEC efforts to conduct a stocktaking exercise of bilateral and regional arrangements on anti-corruption in cooperation with relevant international and regional organizations, and encouraged member economies to fully participate in the stocktaking activities.

Objective: Where appropriate, to self-assess progress against APEC Leaders' and Ministers' commitments on anti-corruption, transparency, and integrity and to identify capacity building needs to assist the ACT to identify priority areas for future cooperation.

EXECUTIVE SUMMARY

1. Summary of main achievements/progress in implementing the commitments of APEC Leaders and Ministers on anti-corruption, transparency, and integrity since 2004.

• Chinese Taipei created the Agency Against Corruption (AAC) in line with Articles 6 and 36 of the UNCAC on July 20, 2011 to further implementation of the UNCAC.
• By referring to APEC Model Code of Conduct Principles for Public Officials, Chinese Taipei established the Integrity and Ethics Directions for Civil Service in 2008 in order to guide all civil servants to execute duties with integrity, fairness and lawful administration.
• Chinese Taipei enacted the Freedom of Government Information Law in 2005 and amended the Administrative Procedure Act in 2005 in order to simplify administrative procedures facilitating public access to the competent decision-making authorities.
• By referring to APEC Model Code of Conduct Principles for Business, Chinese Taipei published "The Handbook of Business Principles of Integrity for Small and Medium Enterprise" in 2010 which was prepared from the perspective of enterprises, reminding them the risk of breaching business integrity.
• Chinese Taipei understands that the UNCAC emphasizes the importance of active participation of individuals and groups outside public sectors. For the purpose of arousing the citizens' awareness and encouraging them to participate, Chinese Taipei in 2011 drawn up plans inviting the citizens as volunteers to actively take part in anti-corruption activities and built the so-called "village platform" mechanism setting up a forum for continuous dialogues between civil servants and the public.
• By referring to the requirement of the OECD Convention, Chinese Taipei amended its Anti-Corruption Act in 2003 to establish as a criminal offence relating to payment of bribery to foreign public officials when conducting international business. In 2011, Chinese Taipei amended its Anti-Corruption Act again. The amendment in 2011 not only broadens the applicable scope of 2003 amendment, but also enhancing the period of imprisonment.
• In order for implementing Article 20 of the UNCAC, Chinese Taipei revised its Anti-Corruption Act in 2011. According to the amendment, a civil servant charged with designated crimes and having abnormal increased property shall face up to 5 years in prison, if failing to explain its source.
• In order to more effectively deter and detect money laundering, Chinese Taipei amended its Money Laundering Control Act in 2009 with an aim to create a comprehensive regulatory and supervisory regime to prevent money-laundering.
• For the reasons of making money laundering control operations more rigorous and to induce remittance customers to leave their data on file, the Financial Supervisory Commission of Chinese Taipei in 2006 promulgated the Directions for Confirming Customer Identity in Domestic Remittance Operations of Financial Institutions (as amended).
• In response to the global trend to curb the detriments caused by money laundering, Chinese Taipei in recent years adopted a wide range of measures corresponding to the 40+9 Recommendations of the FATF.
• In order to realize effective anti-corruption measures in businesses, Chinese Taipei in recent years compiled "Ethical Corporate Management Best Practice Principles for Listed Companies" , "The Handbook of Business Principles of Integrity for Small and Medium Enterprise", and "Special Edition on Ethical Corporate Management Stories in Chinese Taipei". Chinese Taipei also organized a number of activities around December 9, 2011 (International Anti-Corruption Day) in order for promoting integrity in private sectors. Among the activities were "Medical Ethics Forum" and "Enterprise Integrity Summit Forum".
• Chinese Taipei in 2011 issued a guideline instructing prosecutors to actively take actions to freeze, seize, confiscate any illegal gains at the proceedings of criminal cases.
• Chinese Taipei follows the international trend to adopt a medium-period administrative campaign (starting from 2009 to 2012) strengthening to seize and

confiscate any illegal profits gained from crimes, in particular those relating to corruptions, financial crimes and drug-related crimes.

2. Summary of forward work program to implement Leaders' and Ministers' commitments.

- Starting from 2012, Chinese Taipei is reviewing its Act on Recusal of Public Servants Due to Conflicts of Interest in order to further promote transparency and prevent conflicts of interest.
- Starting from 2012, Chinese Taipei is reviewing its Act on Property-Declaration by Civil Servants for the purpose of straightening government ethics and ensuring integrity of civil servants.
- Currently, Chinese Taipei is organizing a task force to follow APEC's steps to write down its own ethics codes in certain private sectors.
- Chinese Taipei currently is under the process of amending its Criminal Code to strengthen the mechanism regarding freezing, seizure and confiscation of proceeds of crimes.

3. Summary of capacity building needs and opportunities that would accelerate/strengthen the implementation of APEC Leaders' and Ministers' commitments by your economy and in the region.

I. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO UNCAC PROVISIONS

LEADERS' AND MINISTERS' COMMITMENTS

- **Santiago Commitment/COA: Take All Appropriate Steps Towards Ratification of, or Accession to, and Implementation of the UNCAC:**
- Intensify our efforts to combat corruption and other unethical practices, strengthen a culture of transparency, ensure more efficient public management, and complete all appropriate steps to ratify or accede to, and implement the UNCAC.
- Develop training and capacity building efforts to help on the effective implementation of the UNCAC's provisions for fighting corruption.
- Work to strengthen international cooperation in preventing and combating corruption as called for in the UNCAC including extradition, mutual legal assistance, the recovery and return of proceeds of corruption.

I.A. Adopting Preventive Measures (Chapter II, Articles 5-13)

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RELEVANT UNCAC PROVISIONS

- Chapter II, Articles 5-13 including:
- Article 5(2) Establish and promote effective practices aimed at the prevention of corruption.
- Art. 7(1) Adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials that:
- are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;
- include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;
- promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;
- promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions.
- Art. 7(4) Adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.
- Art. 8(2) Endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.
- Art. 8(5) Establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials. Art. 52(5)/(6) [sharing the information on the financial disclosures that should be in place]
- Art. 10(b) Simplify administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities

- Art. 12(2)(b) Promote the development of standards and procedures designed to safeguard the integrity of private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State.
- Art. 12(2)(c) Promote transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities.
- Art. 13(1) Promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

• Art. 5(2) Establish and promote effective practices aimed at the prevention of corruption.

Understanding the importance of prevention of corruption, Chinese Taipei is of the view that corruption cannot be tolerated in this jurisdiction. In order to effectively eradicate corruption, Chinese Taipei created the Agency Against Corruption (AAC) in line with Articles 6 and 36 of the UNCAC on July 20, 2011 to further implementation of the UNCAC, in particular the prevention of corruption. Currently, Chinese Taipei has been continuing taking a number of anti-corruption measures and some examples are set below.

Chinese Taipei recalls that Article 5 of the UNCAC requires establishing and promoting effective practices aimed at the prevention of corruption. As soon as its establishment, the AAC first identified certain areas with high corruption-prone, including public construction, police, drug procurement, medical device procurement, destruction of expired food, forestry management, and the procurement of lunches at elementary and junior high school. Through paying special attention to these areas, Chinese Taipei would like to find out different types of corruption and, more importantly, therefore providing effective ways with an objective at the prevention of further corruption in these areas. Having widely analyzed the reasons causing corruption in some of these areas, Chinese Taipei has issued relevant anti-corruption guidelines. These guidelines not only provide with the reasons causing corruption, but also encompassing ways to prevent further corruption. By way of publishing these guidelines, including on the internet, they will certainly create a warning effect for the civil servants concerned.

Additionally, Chinese Taipei is aware that Article 5 of the UNCAC also emphasizes the vital role of society participation. It follows that the citizens' awareness and participation are critical for anti-corruption works. For the purpose of arousing the citizens' awareness and encouraging them to participate, Chinese Taipei has drawn up plans inviting the citizens as volunteers to actively take part in anti-corruption activities with a hope that these volunteers can help advocate anti-corruption concept, monitor civil servants' integrity, and lead the society to a morally clean atmosphere. Even more, Chinese Taipei also built the so-called "village platform" mechanism setting up a forum for continuous dialogues between civil servants and the public. Through widely-built village platforms across this economy, it is expected that more anti-corruption information could be exchanged and the public's awareness on fighting corruption would be arose. With more and more understanding and participation from the public, Chinese Taipei believes that the goal bringing this economy to a high level of cleanliness will be achieved.

• Art. 7(1) Adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials that:
• Are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;
• Include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;
• Promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;
• Promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions.

Chinese Taipei has established comprehensive measures to maintain a sound system with respect to civil servants. The laws and regulations governing the recruitment, promotion, or training of civil servants are based on principles of efficiency, transparency and objective criteria and designed for enabling civil servants to meet the requirements for the correct, honorable and proper performance of public functions. The descriptions below are some laws and regulations established by Chinese Taipei which are relevant to this topic.
With respect to employment of civil servants, Article 1 of the Civil Service Examination Act provides that the employment of civil servants shall be undertaken in accordance with the provisions of this Act by means of examinations to determine qualifications. Article 2(1) of this Act further imposes that the examinations for civil servants shall be conducted in open competition and the computation of candidate scores cannot be made subject to any personal identity or status. Besides, another

Act, the Civil Service Employment Act, is also relevant to the employment of civil servants. According to Article 2 of the Civil Service Employment Act, the employment of civil servants shall be handled in accordance with principles of professional suitability; entry and promotion/transfer shall be accorded equal consideration, to match the right people and the right tasks. Article 5 (1) of this Act additionally prescribes that employment of civil servants shall further consider the ethical character, loyalty, level of education, talent, and experience. In the case of employment of supervisory positions, the candidates' leadership shall be taken into account.

On the issue of promotion of civil servants, Article 2 of the Civil Service Promotion and Transfer Act lays downs that the promotion and transfer of civil servants shall be based on the objective to exact match of person and job, giving ample consideration to organizational characteristics, relevant position requirements and equally considering seniority and performance. Such promotion and transfer shall be made based on transparency, equitableness and impartiality. Article 6 of this Act also requires that each government agency or organization shall establish a list of promotion order in accordance with its scale of positions and administrative needs, which may provide for differentiated treatment of positions according to its respective natures. In any agency or organization when a vacancy is filled through internal promotion or transfer, such promotion or transfer shall conform to the list of promotion order. In order to ensure transparency, equitableness and impartiality, Article 8(1) of this Act provides that, subject to some exceptions, any agency or organization engaging in any promotion or transfer of civil servants shall convene a Promotion Review Board to conduct all screening (selection) activities.

For the purpose of preventing corruption from high-risk civil service position, Chinese Taipei establishes a mechanism for public positions considered especially vulnerable to corruption and the rotation of such civil servants to other positions. According to Article 13 of the Civil Service Promotion and Transfer Act, among personnel within the agency of the same grading of position and equivalent position, an agency shall conduct transfer procedures conforming to the nature of positions and administrative requirements for (a) transfers among the agency's supervisory personnel or deputy supervisory personnel, (b) transfers among the agency's non-supervisory personnel, (c) transfers among the agency's supervisory personnel and all subordinate agencies' heads, deputy heads or supervisory personnel, (d) transfers among the heads, deputy heads or supervisory personnel of the subordinate agencies, and (e) transfers among the agency and its subordinate agencies' or among the subordinate agencies' non-supervisory personnel.

In respect of training, Chinese Taipei has promulgated the Civil Service Training and Continuing Education Act governing training and continuing education for all civil servants. Article 4 of this Act provides that civil servants newly qualified through civil service exams, newly appointed civil servant, personnel newly promoted to a higher rank, and newly appointed managers of all ranks, shall all be subject to the required on-job or pre-job training. The training shall have as its focus on the enrichment of basic concepts, moral integrity, service attitude, administrative procedures, technical knowledge, and other skills or knowledge that have been deemed required learning for the said civil servants. In order to ensure that civil servants maintain political neutrality, impartially enforce the law, and not get involved in political party disputes, Article 5 of this Act specifically requires that the Protection and Training Commission shall conduct political-neutrality training for the said civil servants.

- ***Art. 7(4) Adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.***

The prevention of conflicts of interest and the promotion of transparency are fundamental tools for effectively combating and preventing corruption. In order to promote uncorrupted and efficient politics and prevent conflicts of interest in connection with civil servants, Chinese Taipei enacted the Act on Recusal of Public Servants Due to Conflicts of Interest in 2000. Among the others, Articles 6, 7, 8, and 9 of this Act lays down the general rules for civil servants to avoid conflict of interests. This Act requires that a civil servant shall recuse himself as soon as he is aware of the conflicts of interest. It further demands that a civil servant shall not seek interests for himself or for his related persons by manipulating his official power, opportunities or any method under his official duties. Also, a civil servant and his related persons shall not conduct transactions such as sales, lease and contracting etc. with the agencies with which this civil servant serves or the agencies under his supervision.

With respect to the promotion of transparency, Chinese Taipei has passed the Administrative Procedure Act and the Freedom of Government Information Law, respectively, with the purpose of making people to access to government information easily. For example, Article 46 of the Administrative Procedure Act stipulates that any person affected by a specific administration measure may apply to the administrative authority concerned for examining, transcribing, copying or taking photographs of relevant materials or records, provided that the materials or records are necessary for claiming or protecting his legal interest. Besides, Article 1 of the Freedom of Government Information Law first prescribes that this Law is enacted to facilitate people to share and fairly utilize government information, protect people's right to know, further people's understanding, trust and overseeing of public affairs, and encourage public participation in democracy. In order to realize these objectives, Article 6 of this Law therefore imposes that the government information in connection with administrative measures affecting people's rights and interests shall be made available to the public actively and timely.

- ***Art. 8(2) Endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.***

In order to guide civil servants to execute duties with integrity, fairness and lawful administration, Chinese Taipei establishes the Integrity and Ethics Directions for Civil Servants in 2008. The Directions first requires that civil servants shall follow laws to execute duties impartially and base on the public interests. The attempt to gain improper benefit for oneself or third party via occupational power, method and opportunity is prohibited. Principally, Civil servants cannot request, promise or receive gifts and other undue advantages from the persons in connection with such civil servants' duties. The gifts can only be accepted under the following limited situations that are occasional and not affect the performance of civil servants' duties: (a) civil etiquette, (b) bonus, assistance or consolation from the supervisor, or (c) the market value of gift received is less than NT$500.

Upon occurrence of receiving gift, the matter shall be processed according to following procedures: (a) except for exceptions indicated above, the gift shall be rejected or returned, as well as reported to the supervisor and notified to the Government Employee Ethics Units. If the return is not possible, the matter shall be transferred to the Government Employee Ethics Units for process within 3 days since the date of receipt; and (b) except for relatives or friends of usual social contact, the gift without material interest to the a civil servant's duty but exceeding normal standard of social etiquette in market value shall be reported to the supervisor within 3 days since the date of receipt. If necessary, the matter shall be notified to the Government Employee Ethics Units.
The Directions also sets out standards on a number of issues. For example, When conducting inspection, investigation, business trip or conference, the civil servant in general cannot accept dinning or gathering invitation from the agency concerned other than necessary meals, accommodation and transportation. Further, unless required by the law, civil servants cannot take other part-time jobs and involve in the operation of business. The civil servant shall strive to avoid involvement of monetary loan with others.

Those civil servants violating the requirements under the Directions shall receive punishment according to the relevant laws and regulations. In the event that criminal liability is involved, the matter will be transferred to the competent prosecutors' office.

Finally, the Directions makes a condition that each agency or organization may set stricter regulations on various standards than those set under the Directions, if necessary. Some agencies or organizations have written down their own codes of conduct with stricter standards, including the Code of Conduct for Judges and the Code of Conduct for Prosecutors.

> • ***Art. 8(5) Establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials. Art. 52(5)/(6) [sharing the information on the financial disclosures that should be in place]***

For the purpose of straightening government ethics and ensuring integrity of civil servants, Chinese Taipei enacts the Act on Property-Declaration by Civil Servants in 1994 (amended in 2008). This Act covers the issues with respect to who are qualified to file property declarations, at what time to file, what contents must to file and what is the punishment when failing to file accordingly.

This Act first defines the scope of civil servants who are obliged to file property declarations. Article 2 of this Act provides a variety of civil servants with obligations to file property declarations, including, inter alia, the President and Vice President, the Premier and Vice Premier, the Speaker and Vice Speaker of the Legislative Yuan, the legislators, judges, prosecutors, principal and vice principal of public schools at all levels, and other high-level civil servants (as defined in this Act).

In connection with the timing that the civil servants concerned must file, Article 3 of this Act indicates that civil servants shall declare properties within three months after the date of inauguration and shall annually make regular property declarations.

Regarding the issue of what contents must be included in the declarations, Article 5 of this Act sets down that properties to be declared by civil servants are as follows: (a) immovable properties, vessels, cars and aircrafts, (b) cash, deposits, securities, jewellery, antique articles, calligraphy and paintings, and other valuable properties above certain values, and (c) rightful claims of creditor, debts and investments to various ventures above certain values. Abovementioned properties in the ownership of civil servants' spouse and underage offspring shall be jointly declared.
In the event that civil servants concerned fail to fulfil their obligations under this Act, Article 12 of this Act lays down the punishment. It provides that civil servants, obliged to declare properties, making false declarations due to intentional concealment of properties, shall be imposed of a fine ranging from NT$ 200,000 to 4,000,000. For civil servants, obliged to declare properties, having increments of total properties that are above the total annual income of themselves, their spouses, or underage offspring after comparing the properties declared in two consecutive declaration years, the agencies accepting property declarations shall notify such civil servants to provide explanations of a time limit longer than a month. Those who fail to explain without justifiable reasons or make untruthful explanations shall be imposed of a fine ranging between NT$ 150,000 and 3,000,000. In addition, civil servants, obliged to declare properties, failing to declare properties under the prescribed time limit or intentionally make untruthful declarations without justifiable

reasons shall be imposed with a fine ranging from NT$ 60,000 to 1,200,000. Civil servants obliged to declare properties, after being disposed of the penalty, still failing to declare properties or make rectifications under the notified time limit, shall be imprisoned by punishment not more than one year.

- ***Art. 10(b) Simplify administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities.***

Chinese Taipei enacted the Freedom of Government Information Law in 2005 and amended the Administrative Procedure Act in 2005 in order to simplify administrative procedures facilitating public access to the competent decision-making authorities.

The requisite for the public to access to the competent decision-making authorities is to obtain government information in the first place. For that reason, Chinese Taipei enacted the Freedom of Government Information Law for easy access to government information. Article 7 of this Law provides that, subject to some exceptions, the following government information shall be made available to the public actively: (a) treaties, diplomatic documents, laws, regulations and orders, and local autonomous laws and regulations, (b) the interpretative orders and discretionary standards made by government agencies for helping the inferior government agencies or the subordinates to interpret the laws and regulations consistently, find the facts, and exercise the discretionary power, (c) the structures, duties, addresses, telephone numbers, fax numbers, websites and e-mail addresses of government agencies, (d) documents about administrative guidance, (e) administrative plans, statistics and research reports, (f) budgets and audits, (g) the results of petitions and the decisions of administrative appeals, (h) documents related to public works and procurements, (i) subsidies that are paid or accepted, and (j) meeting records of the agencies based on a collegiate system. Viewing from the said item (c), the purpose of making addresses, telephone numbers, fax numbers, websites and e-mail addresses of government agencies available to the public is to easily facilitate the public access to the competent decision-making authorities.

In addition, Article 8 of the Freedom of Government Information Law further provides that the active publication of government information shall, in general, be made to consider the feasibility of technology and choose among the following ways as appropriate: (a) publish on government registers or other publications, (b) transmit on telecommunications networks or by other ways to provide the public for online search, (c) make available for public browsing, transcribing, photocopying, recording, videotaping, or photographing, (d) hold a press conference or hearing, and (e) any other possible ways of which the public can be made aware.

Apart from the Freedom of Government Information Law which basically governing the access to government information, some Articles of the Administrative Procedure Act are designed to facilitate public access to the competent decision-making authorities. For instance, Article 102 of this Act demands that, in general, an administrative authority shall, before rendering an administrative disposition to impose restraint on the freedom or right of a person or to deprive him of the same, give the person subject to the disposition an opportunity to state his opinions. Article 154 of this Act is also relevant to this issue. It provides that, prior to enacting the legal instruments, including laws, regulations or orders, the administrative authority concerned shall in principle make it to be publicly announced in a government gazette or newspaper and give the following information: (a) name of the authority formulating the legal instruments, or the names of all authorities involved if the legal instruments will be established jointly by several authorities, (b) the legal basis for establishing the legal instruments, (c) full text or the essence of the draft; and (d) the statement to the effect that any person may give the authority designated his opinions within the specified period.

- ***Art. 12(2)(b) Promote the development of standards and procedures designed to safeguard the integrity of private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State.***

Chinese Taipei is concerned the establishment of ethic codes both in public and private areas, and viewing the promotion of integrity among private entities will advance good commercial practices among businesses.

To this end, Chinese Taipei coordinated professional circles to promote the code of conduct and self-discipline mechanism. It coalesce periodically private sectors to develop various concrete corruption-prevention strategies for implementation and continue to develop cooperation and collaboration with civic organizations and specialists in various fields to jointly develop the professional code of conduct for effective implementation.

Furthermore, Chinese Taipei also ever published "The Handbook of Business Principles of Integrity for Small and Medium Enterprise" in 2010 for the enterprises. This Handbook is prepared from the perspective of enterprises, reminding them the risk of breaching business integrity and the preventive measures thereof in the hope that they begin to emphasize the profound meaning of sustainable management represented by business integrity. This Handbook stresses the fact that enterprises' social responsibility and business ethics are actually two sides of the same coin. Enterprises in their operations should be concerned about the needs of all stakeholders, responsible for customers, shareholder, employees and even the general public. SMEs are encouraged to fulfil their social responsibility and obtain consumers' agreement so as ensure their sustainable management.

Chinese Taipei fully understands that APEC in recent years paid great attention to business ethics in private sectors. In particular, the APEC last year passed voluntary codes of business ethics in the sectors of the medical device, biopharmaceutical, and construction. To this end, the AAC organized a number of activities around December 9, 2011 (International Anti-Corruption Day). Among the activities were "Medical Ethics Forum" and "Enterprise Integrity Summit Forum". Thanks to active participation from relevant agencies, academia, enterprise managers, non-profit organizations, journalists and the public, Chinese Taipei trusted a consensus regarding the importance of ethics codes, both in public and private sectors, was reached. Currently, Chinese Taipei is organizing a task force to follow APEC's steps to write down its own codes in certain private sectors.

> • ***Art. 12(2)(c) Promote transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities.***

In order to promote transparency of corporate entities, Chinese Taipei require the following information regarding a company which is incorporated in this economy shall be available to the public, through application or checking on the internet: (a) the name of the company, (b) the scope of business of the company, (c) the location of the company, (d) the shareholder(s) executing the business operations or representing the company, (e) the name of the directors and supervisors of the company, and their respective shareholding in the company, (f) the name of manager, (g) the amount of authorized capital stock or of the paid-in capital; and (h) the date of the approval of its incorporation.

- ***Art. 13(1) Promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption***

Chinese Taipei understands that the UNCAC emphasizes the importance of active participation of individuals and groups outside public sectors. It follows that the citizens' awareness and participation play a vital role in anti-corruption works. For the purpose of arousing the citizens' awareness and encouraging them to participate, Chinese Taipei in 2011 drawn up plans inviting the citizens as volunteers to actively take part in anti-corruption activities with a hope that these volunteers can help advocate anti-corruption concept, monitor civil servants' integrity, and lead the society to a morally clean atmosphere. Even more, Chinese Taipei also built the so-called "village platform" mechanism setting up a forum for continuous dialogues between civil servants and the public. Through widely-built village platforms across this economy, it is expected that more anti-corruption information could be exchanged and the public's awareness on fighting corruption would be arose. With more and more understanding and participation from the public, Chinese Taipei believes that the goal bringing this economy to a high level of cleanliness could be achieved.

The mechanisms establishing the volunteers' participation and village platforms were recently introduced into a significant public construction in Chinese Taipei. As Chinese Taipei in the summer often suffers from typhoons that may seriously damage the reservoirs and affect the stability of the water supply, it specifically passed a bill offering 1.46 billion US dollars (or 54 billion NT dollars) for an improvement project of the water supply system. Since this project involved a huge expenditure, the public's concerns would not only be the project's quality, but also the possible corruption or waste arising from this project. Therefore, in addition to strengthening cross-departmental collaboration and combining with relevant NGOs, Chinese Taipei, through the mechanisms of the volunteers' participation and village platforms, introduced the public to help monitor this project from the very beginning. With all of these efforts, Chinese Taipei hoped that the quality of this project would be assured and no corruption could be found in it.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

- Starting from 2012, Chinese Taipei is reviewing its Act on Recusal of Public Servants Due to Conflicts of Interest in order to further promote transparency and prevent conflicts of interest.
- Starting from 2012, Chinese Taipei is reviewing its Act on Property-Declaration by Civil Servants for the purpose of straightening government ethics and ensuring integrity of civil servants.
- Currently, Chinese Taipei is organizing a task force to follow APEC's steps to write down its own codes in certain private sectors.

I. B. Criminalization and Law Enforcement (Chapter III)

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RELEVANT UNCAC PROVISIONS

- Art. 15 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
- The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another
person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
- The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another
person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.
- Art. 16 (1) adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally,
the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage,
for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.
- Art. 17 Adopt measures to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.
- Art. 20 Adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.
- Art. 21 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:
- The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;
- The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.
- Art. 27 (1) Adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its
domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

- ***Art. 15 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:***
  - ***The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;***
  - ***The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.***

The Anti-Corruption Act of Chinese Taipei embraces a number of measures establishing as criminal offences in relation to various kinds of bribery.
With respect to the promise, offering or giving of bribery to a civil servant, Article 11 (1) of the Anti-Corruption Act states that any person who tenders, promises to give or gives a bribe or other undue advantage to a civil servant in exchange for that civil servant's act in violation of his official duties shall be punished by imprisonment for a term of not more than seven years and not less than one year. Additionally, Article 11 (2) of this Act further stipulates that any person who tenders, promises to give or gives a bribe or other undue advantage to a civil servant in exchange for that civil servant's lawful act shall be punished by imprisonment for a term of not more than three years.

On the subject of the solicitation or acceptance of bribery by a civil servant, Item 5 of Article 4 (1) of the Anti-Corruption Act provides that a civil servant who demands, takes or promises to take bribes or other undue advantage by an act in violation of his official duties shall be punished by imprisonment for life or a term of not less than ten years. In the event that a civil servant who demands, takes or promises to take bribes or other undue advantage by an act falling within his official duties, Item 3 of Article 5 (1) of the Anti-Corruption Act provides that this civil servant shall be punished by imprisonment for a term of not less than seven years.

- ***Art. 16 (1) Adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally,***
the promise, offering or giving to a foreign public official or an official of a public

international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

Chinese Taipei recalls that both the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Convention) requires the legislative measures criminalizing the payment of bribery to foreign public officials in relation to the conduct of international business. By referring to the requirement of the OECD Convention, Chinese Taipei amended its Anti-Corruption Act in 2003 to establish as a criminal offence relating to payment of bribery to foreign public officials when conducting international business. According to the 2003 amendment of this Act, any person, when doing international business transactions, particularly international trade and investment, tendering, promising or giving a bribe or other undue advantage to a foreign public official in exchange for his act inconsistent with his official duties shall be punished by imprisonment for a term of not more than five years.

In 2011, Chinese Taipei amended its Anti-Corruption Act again. The amendment in 2011 not only broadens the applicable scope of 2003 amendment, but also enhancing the period of imprisonment. First, the 2003 amendment only punish those who pay bribery to a foreign public official in exchange for his act inconsistent with his official duties. However, the 2011 amendment stipulates that all of the persons who pay bribery to a foreign public official shall be punished, even when there is no breach of official duties. In the event that the person who pays bribery to a foreign public official in exchange for his unlawful act shall be punished by imprisonment for a term of not more than seven years, which adds two-year period of imprisonment comparing to the 2003 amendment. On the other hand, the person who pays bribery to a foreign public official in exchange for his lawful act shall be punished by imprisonment for a term of not more than three years.

- ***Art. 17 Adopt measures to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.***

Chinese Taipei in its Anti-Corruption Act established as criminal offences regarding a wide range of types in connection with corruption. First, Article 4 of the Anti-Corruption Act stipulates that any civil servant committing any of the following acts shall be punished by imprisonment for life or a term of not less than ten years: (a) stealing or misappropriating public equipment or properties, (b) acquiring valuables or property through the use of undue influence, blackmail, unlawfully forced acquisition, unlawfully forced seizure, or unlawfully forced collection, (c) taking kickbacks from public works or procurements under his or her charge or (d) transporting contraband or carrying goods for tax evasion through using the vehicles owned by the government.

Next, Article 5 of the Anti-Corruption Act provides that any civil servant committing any of the following acts shall be punished by imprisonment for a term of not less than seven years: (a) withdrawing or withholding public funds without authorization with an intent to make a profit, (b) collecting taxes or floating government bonds without legal basis, or (c) fraudulently making others to deliver their personal properties under the cover of legal authority.

Moreover, Article 6 of the Anti-Corruption Act sets forth miscellaneous types of corruption. It provides that any civil servant committing any of the following acts shall be punished by imprisonment for a term not less than five years: (a) with the intent to profit, withholding public funds or public property which are scheduled to be distributed, (b) committing malfeasance while raising funds or requisitioning land or other properties, (c) stealing or misappropriating private property that is in his possession due to an official purpose, or (d) directly or indirectly seeking unlawful gains for himself or for others in matters under his charge or supervision while clearly knowing his act in consistent with the laws, statutes, rules or orders.

- ***Art. 20 Adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.***

In order for implementing Article 20 of the UNCAC, Chinese Taipei has adopted some legislative measures to prevent civil servants from illicit enrichment.

First, in accordance with the Act on Property-Declaration by Civil Servants, in the case of discovering civil servants obliged to declare properties have increments of total properties that are above the total annual income of themselves, their spouses, and underage offspring after comparing the properties declared in two consecutive declaration years, the competent authorities shall notify such civil servants to provide explanations within time limit. In the event that such civil servants notified fail to explain or make untruthful explanations, they shall be imposed of a fine not less than NT150,000 dollars and not more than NT 3, 000,000 dollars.

Sometimes, failure to explain the source of illicit enrichment will be deemed as a criminal offence. According to Article 6-1 of the Anti-Corruption Act, on condition that a civil servant is suspect of violating any specific offenses (as defined in the same Article) and is found that his spouse or underage offspring has had unreasonable increase in property or income at the time of committing the suspected offense or within three years thereafter, that civil servant may be ordered to make an account of the source of such increased property or income. In the event that such a civil servant fails to make an account without reasonable excuse, fails to make a credible account or makes a false account, he shall be punished by imprisonment for a term of not more than five years.

> • ***Art. 21 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:***
> • ***The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;***
> • ***The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.***

A number of legislative measures in relation to forbidding private sector from bribery are available in Chinese Taipei.

First, Article 342 of the Criminal Code provides a general rule that any person trusted to manage affairs for the principal but in violation of his duty with an intent of gaining illegal benefit for himself or a third party and resulting in damages of the principal's assets or other interests shall be punished by imprisonment for a term not more than five years.

In addition to the Criminal Code, some other laws also furnish provisions on preventing specific private sectors from bribery. Article 125-2 of the Banking Act sets forth that a bank's responsible person or staff member violating his duty with an intent of gaining illegal benefit for himself or a third party and resulting in damages the bank's assets or other interests shall be punished by imprisonment for a term not less than three years and not more than ten years. Those who thereby gaining illegal benefit more than NT$100,000,000 shall be punished by imprisonment for a term not less than seven years. In the event that two or more responsible persons or staff members of a bank jointly commit the offenses provided therein, their punishment may be increased by up to one-half of the specified punishment. It should be noted that the aforementioned punishment shall apply to the responsible persons or staff members of both domestic and foreign banks.

Article 35 of the Banking Act also provides that neither the responsible person nor any staff member of a bank shall accept commissions, rebates and the amount of other unwarranted benefits from depositors, borrowers or other customers. This Article applies to both domestic and foreign banks. Article 127 of the Banking Act further provides that any responsible person or staff member of a bank violating Article 35 shall be punished by imprisonment for a term not more than three years.

In addition to the Criminal Code and the Banking Act, Chinese Taipei in its Securities and Exchange Act also establishes a mechanism discouraging solicitation or acceptance of an undue advantage in the course of economic, financial or commercial activities. According to Article 171 of the Securities and Exchange Act, any director, supervisor, or managerial officer of a company publicly offering and issuing securities who, with an intent to procure a benefit for himself or a third party, acts contrary to his duties or misappropriates assets of the company, thus causing damage of NT$5 million or more to the company shall be punished with imprisonment for a term not less than three years and not more than ten years. Where the amount gained by the commission of an offense is NT$100 million or more, a sentence of imprisonment for a term not less than seven years shall be imposed.

Moreover, Article 172 of the Securities and Exchange Act also provides that any director, supervisor, or employee of a stock exchange who demands, agrees to accept or accepts any improper benefit in connection with the performance of his duties shall be punished with imprisonment for a term not more than five years. In the event that any director, supervisor, or employee of a stock exchange who demands, agrees to accept or accepts any improper benefits for actions in breach of his duties shall be punished with imprisonment for a term not more than seven years. In respect of promise, offering or giving bribery to a person relating to a stock exchange, Article 173 of the Securities and Exchange Ac sets forth that any person who promises to offer, agrees to offer, or delivers any improper benefits to any director, supervisor, or employee of a stock exchange who acts contrary to his duty as specified in Article 172 shall be punished with imprisonment for a term not more than three years.

> ***Art. 27(1) Adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.***

Through its Criminal Code, Chinese Taipei adopted legislative measures to establish as a criminal offence regarding participation in any capacity in conjunction with a crime, such as an accomplice, assistant or instigator in an offence. For instance, Article 28 of the Criminal Code provides that each of the two or more persons acting jointly in the commission of an offense is a principal offender. Article 29 of the Criminal Code provides that a person who solicits another to have committed an offense shall be punished according to the punishment prescribed for the solicited offense. Also, Article 30 of the Criminal Code provides that a person who aids another in the commission of a crime is an accessory in spite of the unawareness of the person aided.

I.C Preventing Money-Laundering

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RELEVANT UNCAC PROVISIONS

- Art. 14(1) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering.
- Art. 14(2) Implement feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders.
- Art. 14(3) Implement appropriate and feasible measures to require financial institutions, including money remitters, to: (a) include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator; (b) maintain such information throughout the payment chain; and (c) apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

> ***• Art. 14(1) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons, that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering.***

It is widely recognized that money laundering would cause serious threats to social order, legitimate business and law enforcement authorities. The United Nations Conference in the 6th Plenary Meeting in 1988 therefore required member states to criminalize money laundering activities and, later, the Financial Action Task Force (FATF) drew up the 40 Recommendations in 1996 and 9 Special Recommendations in 2001 as the international standards and requirements on anti-money laundering and combating the financing of terrorist (AML/CFT). In order to deter and detect money laundering, Chinese Taipei established its Money Laundering Control Act in 1997 (as amended in 2009). This Act created a comprehensive regulatory and supervisory regime to prevent money-laundering.

With regard to creating guidelines on preventing money laundering, Article 6 of the Money Laundering Control Act provides that every financial institution referred to in this Act shall establish its own money laundering prevention guidelines and procedures, and submit those guidelines and procedures to the competent authority and the Ministry of Finance for review. The contents of these guidelines and procedures shall include the following items: (a) the operation and the internal control procedures for money laundering prevention, (b) the regulatory on-job training for money laundering prevention instituted or participated in by the financial institution referred to in this Act, (c) the designation of a responsible person to coordinate and supervise the implementation of the established money laundering prevention guidelines and procedures and (d) other cautionary measures prescribed by the competent authority and the Ministry of Finance.

The Money Laundering Control Act understands the importance of identifying customer and keeping transaction records. Article 7 of this Act lays downs that, for any currency transaction exceeding a certain amount of money, the financial institutions shall ascertain the identity of customer and keep the transaction records as evidence, and submit the financial transaction, the customer's identity and the transaction records to the Investigation Bureau (MJIB). Any financial institution in breach of this requirement shall be punished by a fine between NT 200,000 dollars and NT 1 million dollars.

Furthermore, Article 8 of the Money Laundering Control Act requires that, for any financial transaction suspected of committing a crime prescribed in this Act, the financial institutions shall ascertain the identity of the customer and keep the transaction record as evidence, and report the suspected financial transaction to the MJIB. This provision applies even if the transaction is not completed. The reporting financial institution will be discharged from its confidentiality obligation to the customer in the event that the institution can produce evidence that it acts in good faith when reporting the suspected financial transaction. Any financial institution in violation of the reporting requirement shall be fined between NT200, 000 dollars and NT 1 million dollars. In practice, the following financial transactions shall be deemed as suspicion and shall

be reported to the MJIB: (a) the aggregate same-day deposits and/or withdrawals in a single account total amount to NT$500,000 dollars (or its equivalent in foreign currency) and the transaction is clearly out of keeping with the customer's status or income level or with the nature of the customer's business, (b) a single customer carries out multiple cash deposits or withdrawals at a single counter, and the aggregate deposits or aggregate withdrawals total amount to NT$500,000 dollars (or its equivalent in foreign currency), and the transaction is clearly out of keeping with the customer's status or income level or with the nature of the customer's business, (c) funds are wired into the country from a country named on the FATF list of NCCT, the recipient makes a cash withdrawal or account transfer within five working days, and the transaction is clearly inconsistent with the customer's status or income level or with the nature of the customer's business, (d) the ultimate beneficiary of a transaction, or a party to a transaction, is named on a list of terrorists or terrorist organizations; or transacted funds are known or reasonably suspected to be connected with terrorist activities or terrorist organizations, or are being used to finance terrorism, (e) a single customer at a single counter in a single transaction carries out multiple cash wire transfers, or asks to create a negotiable instrument (e.g. cashier's check, interbank check, bank draft), or purchases negotiable certificates of deposit, traveler's checks, beneficiary certificates, or other negotiable securities, where the amount exceeds NT$500,000 dollars (or the foreign currency equivalent) and the customer is unable to provide a reasonable use for the funds or (f) the transaction shows the indicators of money laundering as set out in the Money Laundering Prevention Guidelines and Procedures and has been identified as an unusual transaction in accordance with the financial institution's internal procedures.

Finally, the Money Laundering Control Act further criminalizes the activities relating to money laundering. According to Article 11 of this Act, any person who knowingly disguises or conceals the property or property interests obtained from a serious crime committed by him shall be sentenced to imprisonment for a term not more than five years. Further, any person who knowingly conceals, accepts, transports, stores, intentionally buys, or acts as a broker to manage the property or property interests obtained from a serious crime committed by others shall be sentenced to imprisonment for not more than seven years.

- ***Art. 14(2) Implement feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders.***

Chinese Taipei has established legislative measures to detect and monitor the movement of cash and negotiable instruments across the borders. In Article 10 of its Money Laundering Control Act Chinese Taipei demands that passengers or service crew on board who cross the border with the carrier and carry the following items shall make declarations to the customs: (a) cash of foreign currency with total amount exceeding a certain amount, or (b) negotiable securities with face value exceeding a certain amount. Subsequent to receiving such declarations, the customs shall report to the MJIB. The amount of currency and negotiable securities mentioned above as well as the scope, procedures and other matters in relation to declaration and reporting shall be stipulated by the Ministry of Finance in consultation with the Central Bank, and the Financial Supervisory Commission. At present, the declaration threshold has been set to exceed an amount of US10, 000 dollars or the equivalence in other foreign currencies. Beginning from July 1, 2006, the Directorate General of Customs began to forward the international Currency Transportation Reports (ICTRs) to the MJIB by electronic media per a period of ten days.

Article 10 of the Money Laundering Control Act further provides that in the event that any person obligated to declare fails to make such declaration, the foreign currencies that he carries shall be confiscated. In the event of untruthful declaration with regard to the amount of foreign currency carried, the amount exceeding the number declared shall be confiscated. Failure to make declaration with regard to the amount of negotiable securities carried or in the event of untruthful declaration, a fine in the amount equivalent to the amount not declared or not truthfully declared shall be imposed.

- ***Art. 14(3) Implement appropriate and feasible measures to require financial institutions, including money remitters, to:***
  (a) include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;
  (b) maintain such information throughout the payment chain; and
  (c) apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

In order to make money laundering control operations more rigorous and to induce remittance customers to leave their data on file, the Financial Supervisory Commission of Chinese Taipei in 2006 promulgated the Directions for Confirming Customer Identity in Domestic Remittance Operations of Financial Institutions (as amended). The Directions applies to both a domestic bank and Taiwan branch of a foreign bank (a financial institution).

According to the Directions, a financial institution that performs a domestic cash remittance of NT$30,000 or more but less than NT$500,000, or a domestic account-transfer remittance of NT$30,000 or more, shall be in compliance with the Directions. Specifically, in case a financial institution handles over-the-counter domestic remittances, it shall retain the remitter's full name, national identity card number, and phone number (or address). In the event that the remitter is a legal person, sole

proprietorship, organization, or partnership enterprise, it shall take down the name, government unified invoice number, and phone number (or address) thereof. In the event that the remittance is handled by an agent, it shall note the agent's name and national identity card number on the remittance application form. When a financial institution handles a remittance, the relevant procedures and documents required for checking and confirming customer identity shall be handled in accordance with the rules adopted by the Bankers Association established in Chinese Taipei.

II. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO APEC INEGRITY STANDARDS (CROSS CHECK WITH I.A. ABOVE)

LEADERS' AND MINISTERS' COMMITMENTS

- **Santiago Commitment/COA: Strengthen Measures to Effectively Prevent and Fight Corruption and Ensure Transparency by Recommending and Assisting Member Economies to:**
- Establish objective and transparent criteria that assure openness for merit, equity, efficiency for the recruitment of civil servants, and promote the highest levels of competence and integrity;
- Adopt all necessary measures to enhance the transparency of public administration, particularly with regard to organization, functioning and decision-making processes;
- Develop and implement appropriate public financial disclosure mechanisms or codes of conduct for senior-level public officials [SOM III: Guidelines];

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MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Santiago Commitment/COA: Strengthen Measures to Effectively Prevent and Fight Corruption and Ensure Transparency by Recommending and Assisting Member Economies to:

- ***Establish objective and transparent criteria that assure openness for merit, equity, efficiency for the recruitment of civil servants, and promote the highest levels of competence and integrity;***

See response above (I.A.).

- ***Adopt all necessary measures to enhance the transparency of public administration, particularly with regard to organization, functioning and decision-making processes;***

See response above (I.A.).

- ***Develop and implement appropriate public financial disclosure mechanisms or codes of conduct for senior-level public officials [SOM III: Guidelines];***

See response above (I.A.).

III. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO SAFE HAVENS(CROSS CHECK WITH I.C. ABOVE):

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LEADERS' AND MINISTERS' COMMITMENTS

- **Santiago Commitment/COA: Deny safe haven to officials and individuals guilty of public corruption, those who corrupt them, and their assets:**
- Promote cooperation among financial intelligence units of APEC members including, where appropriate, through existing institutional mechanisms.
- Encourage each economy to promulgate rules to deny entry and safe haven, when appropriate, to Officials and individuals guilty of public corruption, those who corrupt them, and their assets.
- Implement, as appropriate, the revised Financial Action Task Force (FATF) 40 Recommendations and FATF's Special Recommendations (Santiago Course of Action)
- Work cooperatively to investigate and prosecute corruption offenses and to trace freeze, and recover the proceeds of corruption (Santiago Course of Action)
- Implement relevant provisions of UNCAC. These include:

- Art. 14 (Money laundering)
- Art. 23 (Laundering of Proceeds of Crime)
- Art. 31 (Freezing, seizure and confisction)
- Art. 40 (Bank Secrecy)
- Chapter V (Asset Recovery)

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Santiago Commitment/COA: Deny safe haven to officials and individuals guilty of public corruption, those who corrupt them, and their assets:

> • ***Promote cooperation among financial intelligence units of APEC members including, where appropriate, through existing institutional mechanisms.***

Chinese Taipei understands when the development of emerging technology and transportation is speeding up the transnational movement of illegal funds and criminals; the traditional boundary loses its meaning in the context of across board crimes, including money laundering. Recognizing international cooperation is playing a vital role for effectively deterring and combating money laundering, terrorist financing and other transnational organized crimes, Chinese Taipei spares no effort to use possible channels to exchange ML/FT intelligence with counterparts from international community.

It is recalled that Recommendation 26 of the FATF requires the establishment of a financial intelligence unit (FIU) which serves as a centre for the receiving (and, as permitted, requesting), analysis and dissemination of suspicious transaction reports (STRs) and other information regarding potential money laundering or terrorist financing. For the purpose of implementing this Recommendation, Chinese Taipei in Article 8 (1) of its Money Laundering Control Act provides that any financial transaction suspected of committing a crime shall be reported to the MJIB and the MJIB then created the Anti-Money Laundering Division (AMLD) as the FIU in Chinese Taipei.
Since money laundering is a transnational offense in nature, it requires consensus and concerted efforts from all the governments to effectively combat cross-border money laundering and terrorism financing. In order for enhancing international cooperation on AML/CFT, Article 16 of the Money Laundering Control Act stipulates that, based on the principle of reciprocity, Chinese Taipei is willing to sign cooperation treaties or agreements relating to the prevention of money laundering so as to effectively combat international money laundering activities. With regard to the request for assistance by foreign governments, institutions or international organizations, information of declarations or reporting and investigation result would in general be provided.
Currently, the AMLD has signed Agreements and MOUs with a number of foreign counterpart for information exchange on AML/CFT and also actively participate in related international AML/CFT fora and activities held by relevant international organizations. In addition, the AMLD may exchange information through the following channels under the authorization of Chinese Taipei's Money Laundering Control Act and the Data Protection Law: (a) if the counterpart is a member of the Egmont Group, the AMLD will exchange information through the Egmont Secured Website, (b) if the counterpart is not a member of the Egmont Group but has signed MOU or Agreement with Chinese Taipei, the AMLD also can directly exchange information by fax, letter or email depending on the speed and confidentiality of the case concerned, and (c) if the counterpart is not a member of the Egmont Group and does not sign MOU or Agreement with Chinese Taipei, the AMLD still can exchange information with its counterparts based on mutual benefits and reciprocity.

> • ***Encourage each economy to promulgate rules to deny entry and safe haven, when appropriate, to Officials and individuals guilty of public corruption, those who corrupt them, and their assets.***

Chinese Taipei employs a number of measures to deny itself as the safe haven for any criminals, including those committing corruption crimes in the jurisdictions outside Chinese Taipei. For instance, in the case that the person committing the corruption crime in a foreign country flees to Chinese Taipei, the competent authority of Chinese Taipei will be cooperative with its counterpart of that foreign country on how to jointly investigate the corruption case according to the applicable laws or treaties. Also, the person committing the corruption crimes in the jurisdiction outside Chinese Taipei may be extradited or deported in line with the Law of Extradition, the Immigration Act and other applicable treaties. In conclusion, Chinese Taipei would not be the safe haven to officials and individuals guilty of public corruption.

> • ***Implement, as appropriate, the revised Financial Action Task Force (FATF) 40 Recommendations and FATF's Special Recommendations (Santiago Course of Action)***

Although not a member, Chinese Taipei participates in the FATF meetings and activities as a member of the Asia/Pacific Group on Money Laundering, which is an associate member of the FATF. In response to the global trend to curb the detriments caused by money laundering, Chinese Taipei adopted a wide range of measures corresponding to the 40+9 Recommendations of the FATF.

Chinese Taipei enacted the Money laundering Control Act as its principal law on preventing and combating money laundering. This Act criminalizes certain activities in relation to money laundering. Since the enactment of this Act, the competent authorities of Chinese Taipei have prosecuted a significant number of cases relating to

money laundering. As stated above, Chinese Taipei has also implemented a system of comprehensive AML/CFT measures for financial institutions. Financial institutions in Chinese Taipei are generally complying with the requirements established by the relevant authorities. In particular, the requirement to maintain AML internal controls and systems by financial institutions in Chinese Taipei is embedded in the laws and is well supported by regulatory initiatives. Overall the obligations on financial institutions to have internal controls are comprehensive. Chinese Taipei is confident that, through cooperation among the MJIB, financial sector regulatory and supervisory authorities and relevant self regulatory organizations, a good AML/CFT culture among the financial institutions has been developed.
There is one example explaining that Chinese Taipei has adopted comprehensive measures to implement the 40+9 Recommendations of the FATF. In a letter made by International Cooperation Review Group (ICRG) dated in October, 2009, Chinese Taipei is informed that because Chinese Taipei has made several amendments to its Money Laundering Control Act that criminalize the financing of terrorism and legislate the reporting of transactions suspected of financing terrorism in response to the findings of 2007 APG evaluation, which fully demonstrates Chinese Taipei's resolve and commitment to complying with all FATF recommendations. The ICRG concluded that there is no need to conduct further review on Chinese Taipei and Chinese Taipei was removed from consideration pool with deficient anti-money laundering and combating financing regimes.

- ***Work cooperatively to investigate and prosecute corruption offenses and to trace freeze, and recover the proceeds of corruption (Santiago Course of Action)***

See response below (V).

- ***Implement relevant provisions of UNCAC. These include:***
  - ***o Art. 14 (Money laundering)***

See response above (I.C.).

- ***o Art. 23 (Laundering of Proceeds of Crime)***

In line with Article 23 of the UNCAC, Chinese Taipei adopted legislative measures, mainly the Money Laundering Control Act, to establish as criminal offences of various types relating to laundering of proceeds of crime.

Article 11 of the Money Laundering Control Act provides that any person who knowingly disguises or conceals the property or property interests obtained from a serious crime committed by him shall be sentenced to imprisonment for a term not more than five years. Moreover, this Article also provides that any person knowingly conceals, accepts, transports, stores, intentionally buys, or acts as a broker to manage the property or property interests obtained from a serious crime committed by others shall be sentenced to imprisonment for a term not more than seven years.

- ***o Art. 31 (Freezing, seizure and confiscation)***

The UNCAC requires taking, to the greatest extent possible within domestic legal system, such measures as may be necessary to enable confiscation of proceeds of crime and property, equipment or other instrumentalities as defined in accordance with the UNCAC. Although not a signatory party of this Convention, Chinese Taipei adopted diverse legislative measures to implement such requirements.

The fundamental mechanism in conjunction with freezing, seizure and confiscation is provided by the Criminal Code and the Code of Criminal Procedure. According to Article 38 of the Criminal Code, the proceeds derived from or acquired through the commission of an offense shall be confiscated when the proceeds belong to the offender. Besides, Article 133 of the Code of Criminal Procedure states that anything which can be used as evidence or is subject to confiscation may be seized. The owner, possessor, or custodian of the property subject to seizure may be ordered to deliver it.

In addition to the Criminal Code and the Code of Criminal Procedure, a number of other laws also touch upon freezing, seizure and confiscation of proceeds of crime. First of all, Article 9 of the Money Laundering Control Act sets forth that whenever the prosecutor obtains sufficient evidence to prove that the offender has committed a designated crime (as defined in this Act) by transporting, transmitting, or transferring a monetary instrument or funds through bank deposit, wire transfer, currency exchange or other means of payment, the prosecutor may request the court to order the financial institution to freeze that specific money laundering transaction to prevent withdrawal, transfer, payment, delivery, assignment or make other necessary disposition of the involved funds for a period not more than six months. The prosecutor on his own authority may freeze a specific money laundering transaction and request the court's approval within three days whenever the prosecutor has probable cause to believe that the property or property interests obtained by the offender from the commission of crime are likely to disappear under exigent circumstances. In such case, the prosecutor must immediately remove the hold on transaction if failing to obtain the court's approval within three days. In the event that the court fails to approve within three days or the prosecutor fails to petition to the court for approval within three days, the hold shall be removed. In addition, during the trial proceeding, the judge has discretion to order a financial institution to freeze the offender's money laundering transactions for purposes of withdrawal, transfer, payment, delivery, assignment or make other necessary disposition. The abovementioned measures shall also apply to foreign governments, foreign institutions or international

organizations requesting for assistance to a particular money laundering activity based on relevant treaties or agreements. Article 14 of the Money Laundering Control Act further states that the property or property interests obtained from the commission of a designated crime (as defined in this Act) by an offender, other than that which should be returned to the victims or third parties, shall be confiscated, regardless of whether the property or property interests belong to the offender or not. Whenever the above property or property interests cannot be confiscated in whole or in part, the value thereof shall be indemnified either by demanding a payment from the offender or by offsetting such value with the property of the offender.

Article 10 of the Anti-Corruption Act sets out that the gains of the offender shall be retrieved and then confiscated or returned to the victims. Also, Article 7 of the Organized Crime Prevention Act provides that the overall property of a criminal organization owned by an offender acting in contravention of this Act shall be confiscated after deducting any portion belonging to the victims.

In order for effectively implementing the said legislative measures in regard with freezing, seizure and confiscation of proceeds of crimes, Chinese Taipei in 2011 issued a guideline instructing prosecutors to actively take actions to freeze, seize, confiscate any illegal gains at the proceedings of criminal cases. By means of depriving of any illegal gains derived from or acquired through the commission of an offense, Chinese Taipei is confident that these legislative and administrative measures should be effective to fulfill the requirements established by the UNCAC.

o Art. 40 (Bank Secrecy)

Through its Banking Act, Chinese Taipei demands that a bank shall, in general, keep confidential all related information on deposits, loans or remittances of its customers. On the other hand, Chinese Taipei is conscious that Article 40 of the UNCAC requires that each state party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws. In order to execute this requirement established by the UNCAC, Chinese Taipei in Article 8 of its Money Laundering Control Act provides that, for any financial transaction suspected of committing a crime prescribed in this Act, the financial institutions shall ascertain the identity of the customer and keep the transaction record as evidence, and report the suspect financial transaction to the MJIB, even if the transaction is not completed. The reporting financial institution will be discharged from its confidentiality obligation to the customer if the institution is acting in good faith when reporting the suspect financial transaction to the competent authority in compliance with this Act.

o Chapter V (Asset Recovery)

Chinese Taipei is aware that most of the economies across the world in recent years have been aggressively adopting relevant policies to seize and confiscate illegal profits as resulting from criminal activities. Chinese Taipei follows this international trend to adopt a medium-period administrative campaign (starting from 2009 to 2012) strengthening to seize and confiscate any illegal profits gained from crimes, in particular those relating to corruptions, financial crimes and drug-related crimes.

Specifically, all levels of Prosecutors Offices in Chinese Taipei have established their respective responsible team of seizing and confiscating criminal gains in June, 2011. The purpose establishing these responsible teams is to offer consultation and assistance to each prosecutor when he faces problems regarding how to seize or confiscate illegal profits on the cases assigned. In order to integrate resources available from a variety of departments, Chinese Taipei further creates a cross-department contact window. This contact window provides the prosecutors with useful information in time in emergent cases, so that the illegal profits can be seized and confiscated effectively and promptly.

Chinese Taipei has completed establishment of the "Contact Name List of Headquarters of Financial Institutions" (with 38 local banks, 17 foreign banks, and 25 credit unions) as well as the "Business Schedule of Safe Deposit Box and Trust Account of Operating Financial Institutions". Such an establishment not only makes it more convenient for prosecutors to access to consults on relevant information, but also facilitating the seizure and confiscations of illegal gains deposited in safe deposit boxes. In order to deal with the illegal profits seized which are at risks of losing their value or inconvenient in preserving, Chinese Taipei promulgated the "Notes Concerning Price Changes on Items Seized" on December 16, 2011.

The performance of seizing and confiscating illegal profits involves in professional knowledge and techniques. For the purposes of making prosecutors and police become familiar with relevant knowledge and techniques, a number of training programs were hold on February and March of 2012.

Chinese Taipei currently is under the process of amending its Criminal Code to strengthen the mechanism regarding freezing, seizure and confiscation of proceeds of crimes.

IV. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO PRIVATE SECTOR CORRUPTION:

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LEADERS' AND MINISTERS' COMMITMENTS

- **Santiago Commitment/COA: Fight both Public and Private Sector Corruption:**
- Develop effective actions to fight all forms of bribery, taking into account the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or other relevant anticorruption conventions or initiatives.
- Adopt and encourage measures to prevent corruption by improving accounting, inspecting, and auditing standards in both the public and private sectors in accordance with provisions of the UNCAC.
- Support the recommendations of the APEC Business Advisory Council (ABAC) to operate their business affairs with the highest level of integrity and to implement effective anticorruption measures in their businesses, wherever they operate.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Santiago Commitment/COA: Fight both Public and Private Sector Corruption:

> • ***Develop effective actions to fight all forms of bribery, taking into account the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or other relevant anticorruption conventions or initiatives.***

See response above (I.B).

> • ***Adopt and encourage measures to prevent corruption by improving accounting, inspecting, and auditing standards in both the public and private sectors in accordance with provisions of the UNCAC.***

Apart from having adopted legislative measures to criminalize various forms of bribery, Chinese Taipei also adopted certain measures to further accounting, inspecting, and auditing standards in private sectors.

Article 11 (2) of the Certified Public Accountant Act requires that a CPA engaged to provide auditing and attestation of a financial report shall perform his duties in accordance with the regulations prescribed by the competent authority. Moreover, Article 14 (2) of the Securities and Exchange Act provides that regulations governing the preparation of financial reports with respect to the content, scope, procedures, preparation, and other matters to be complied with for the financial reports shall be prescribed by the competent authority. Thus, Article 3 (1) of the Regulations Governing the Preparation of Financial Reports by Securities Issuers sets forth that the financial reports of an issuer shall be prepared in accordance with these Regulations and other applicable laws and regulations. The Regulations also provides that matters not provided for therein shall be governed by generally accepted accounting principles (GAAP). More importantly, Article 5 of the Regulations further sets forth the financial reports shall present fairly the financial position, financial performance, and cash flows of an issuer without being misleading to an interested party in making judgments and decisions. In the event that a financial report violates the Regulations or any other applicable requirements, for which the Financial Supervisory Commission as a result of an audit gives a notice of adjustment, the issuer shall make the required adjustment and correction. In case the adjusted amount meets the standard set by the Financial Supervisory Commission, a corrected financial report shall be publicly disclosed, together with an indication of the reasons for the adjustment, the items adjusted, and amount of adjustment as notified by the Financial Supervisory Commission.

> • ***Support the recommendations of the APEC Business Advisory Council (ABAC) to operate their business affairs with the highest level of integrity and to implement effective anticorruption measures in their businesses, wherever they operate.***

Integrity and ethics are the key elements in building a clean government, and they are also the foundation for the smooth operation of free markets. Chinese Taipei is aware that APEC has identified "promoting corporate social responsibility" and "combating corruption" as the two main issues that have to be dealt with in terms of globalization. APEC has also drafted a Code of Conduct for Business, and encourages the private and public sectors to build partnerships to improve management mechanisms and combat corruption.

In order to implement effective anti-corruption measures in businesses, Chinese Taipei has compiled "Ethical Corporate Management Best Practice Principles for Listed

Companies" , "The Handbook of Business Principles of Integrity for Small and Medium Enterprise", and "Special Edition on Ethical Corporate Management Stories in Chinese Taipei". Also, Chinese Taipei organized a number of activities around December 9, 2011 (International Anti-Corruption Day) in order for promoting integrity in private sectors. Among the activities were "Medical Ethics Forum" and "Enterprise Integrity Summit Forum". Thanks to active participation from relevant agencies, academia, enterprise managers, non-profit organizations, journalists and the public, Chinese Taipei trusted a consensus regarding the importance of integrity in private sectors was reached. All of these measures or activities are adopted or held for the purposes of making private sectors to operate their business affairs with the highest level of integrity.

V. ENHANCING REGIONAL COOPERATION

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LEADERS' AND MINISTERS' COMMITMENTS

- **Santiago Commitment/COA: Strengthen Cooperation Among APEC Member Economies to Combat Corruption and Ensure Transparency in the Region:**
- Promote regional cooperation on extradition, mutual legal assistance and the recovery and return of proceeds of corruption
- Afford one another the widest measure of mutual legal assistance, in investigations, prosecutions and judicial proceedings related to corruption and other offences covered by the UNCAC.
- Designate appropriate authorities in each economy, with comparable powers on fighting corruption, to include cooperation among judicial and law enforcement agencies and seek to establish a functioning regional network of such authorities.
- Sign bilateral and multilateral agreements that will provide for assistance and cooperation in areas covered by the UNCAC. (Santiago Course of Action) These include:
    - o Art. 44 – Extradition
    - o Art. 46 – Mutual Legal Assistance
    - o Art. 48 – Law Enforcement Cooperation
    - o Art. 54 -- Mechanisms for recovery of property through international cooperation in confiscation
    - o Art. 55 – International Cooperation for Purposes of Confiscation
- Work together and intensify actions to fight corruption and ensure transparency in APEC, especially by means of cooperation and the exchange of information, to promote implementation strategies for existing anticorruption and transparency commitments adopted by our governments, and to coordinate work across all relevant groups within APEC (e.g., SOM, ABAC, CTI, IPEG, LSIF, and SMEWG).
- Coordinate, where appropriate, with other anticorruption and transparency initiatives including the UNCAC, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, FATF, the ADB/OECD Anticorruption Action Plan for the Asia Pacific region, and Inter-American Convention Against Corruption.
- Recommend closer APEC cooperation, where appropriate, with the OECD including a joint APEC-OECD seminar on anticorruption, and similarly to explore joint partnerships, seminars, and workshops with the UN, ADB, OAS, the World Bank, ASEAN, and The World Bank, and other appropriate multilateral intergovernmental organizations.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

- ***Promote regional cooperation on extradition, mutual legal assistance and the recovery and return of proceeds of corruption.***

With respect to extradition, Chinese Taipei has created the mechanism on regional cooperation on extradition. According to Article 2 of the Law of Extradition, subject to some exceptions, extradition may be approved in the event that the offense is committed within the territory of the foreign country making requisition and in the event that it is punishable both under the laws of Chinese Taipei and that foreign country. Even the offense is committed outside Chinese Taipei and the country making requisition, extradition may also be approved if this offense is punishable under the laws of both Chinese Taipei and that foreign country.
On the subject of mutual legal assistance, Article 1 of the Law in Supporting Foreign Courts on Consigned Cases provides that, unless otherwise provided for in laws or regulations, this Law governs courts when they are consigned by a foreign court to help take charge of civil or criminal cases. Article 6 of this Law further states that the exhibits or evidence of civil or criminal cases for which a court is consigned by a foreign court to help investigate shall be duly handled according to the Code of Civil or Criminal Procedure enacted by Chinese Taipei. Moreover, Article 2 of the Agreement on Mutual Legal Assistance in Criminal Matters Between the Taipei Economic and Cultural Representative Office in the United States and

the American Institute in Taiwan provides that the parties shall provide mutual assistance through the relevant authorities of the territories they represent, in accordance with the provisions of this Agreement, in connection with the investigation, prosecution, and prevention of offenses, and in proceedings related to criminal matters. Assistance shall include:(a) taking the testimony or statements of persons, (b) providing documents, records, and articles of evidence, (c) locating or identifying persons, (d) serving documents, (e) transferring persons in custody for testimony or other purposes, (f) executing requests for searches and seizures, (g) assisting in proceedings related to, (h) immobilization and forfeiture of assets, restitution, or collection of fines; and (i) any other form of assistance not contrary to the laws of the territory represented by the requested party. In general, assistance shall be provided without regard to whether the conduct that is the subject of the investigation, prosecution, or proceeding in the territory represented by the requesting party would constitute an offense under the laws of the territory represented by the requested party.

With regard to return of proceeds of crimes, including those in relation to corruption, Article 17 of the Agreement on Mutual Legal Assistance in Criminal Matters Between the Taipei Economic and Cultural Representative Office in the United States and the American Institute in Taiwan provides that if the designated representative (as defined in this Agreement) for one party becomes aware of proceeds or instrumentalities of offenses which are located in the territory represented by the other party and may be forfeitable or otherwise subject to seizure under the laws of the territory represented by that party, it may so inform the designated representative for the other party. If the relevant authorities of the territory represented by that other party have the necessary authority over forfeiture or seizure, the designated representative for that other party may present this information to the authorities of the territory represented by that party for a determination whether any action is appropriate. These authorities shall issue their decision in accordance with the laws of their territory, and shall, through their designated representative, report to the designated representative for the other party on the action taken. The designated representatives for the parties shall assist each other to the extent permitted by the respective laws of the territories represented by them in proceedings relating to the forfeiture of the proceeds and instrumentalities of offenses, restitution to the victims of crime, and the collection of fines imposed as sentences in criminal prosecutions. This may include action to immobilize temporarily the proceeds or instrumentalities pending further proceedings. Proceeds or instrumentalities of offenses shall be disposed of in accordance with the laws of the territories represented by the parties. Either party may transfer all or part of such assets, or the proceeds of their sale, to the other party, to the extent permitted by the laws of the territory represented by the transferring party and upon such terms as it deems appropriate.

- ***Afford one another the widest measure of mutual legal assistance, in investigations, prosecutions and judicial proceedings related to corruption and other offences covered by the UNCAC.***

See the preceding response.

- ***Designate appropriate authorities in each economy, with comparable powers on fighting corruption, to include cooperation among judicial and law enforcement agencies and seek to establish a functioning regional network of such authorities.***

On July 20, 2011, Chinese Taipei created the Agency Against Corruption (AAC) in line with Articles 6 and 36 of the UNCAC. The AAC's responsibilities include, among other things, prevention of corruption and combating of corruption. The AAC is the first-ever agency specially established with an express mandate to fight and prevent corruption. It is the only organization in Chinese Taipei that fulfills the recommendations of the UNCAC, being comprehensively empowered to draw up policies as well as to take action to prevent and eradicate corruption. This demonstrates Chinese Taipei's determination to maintain the highest possible standards. The AAC's establishment marks the first time that an agency dedicated to monitoring the ethical behavior of civil servants at all levels of governments. In order to further cooperation among judicial and law enforcement agencies, the AAC is staffed with prosecutors empowered to investigate and prosecute corruption cases as well as to coordinate with other law enforcement agencies.

The establishment of the AAC represents an important milestone in Chinese Taipei's pursuit of government integrity. Its creation bears testimony to the government's commitment to foster a clean and honest society, uplift the people's quality of life, and strengthen the foundation for Chinese Taipei's sustainable development.

- ***Sign bilateral and multilateral agreements that will provide for assistance and cooperation in areas covered by the UNCAC. (Santiago Course of Action) These include:***
  - ***o Art. 44 – Extradition***
  - ***o Art. 46 – Mutual Legal Assistance***
  - ***o Art. 48 – Law Enforcement Cooperation***
  - ***o Art. 54 -- Mechanisms for recovery of property through international cooperation in confiscation***
  - ***o Art. 55 – International Cooperation for Purposes of Confiscation***

See response above.

- ***Work together and intensify actions to fight corruption and ensure transparency in APEC, especially by means of cooperation and the exchange of information, to promote implementation strategies for existing anticorruption and transparency commitments adopted by our governments, and to coordinate work across all relevant groups within APEC (e.g., SOM, ABAC, CTI, IPEG, LSIF, and SMEWG).***

See the response above (III). Additionally, Chinese Taipei understands that the SMEWG in recent years established a series of voluntary codes of business ethics in certain private sectors. Chinese Taipei has showed its passion and enthusiasm by attending those principle-making meetings and will write down its own codes of

conduct in these sectors following the principles established by the SMEWG.

- ***Coordinate, where appropriate, with other anticorruption and transparency initiatives including the UNCAC, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, FATF, the ADB/OECD Anticorruption Action Plan for the Asia Pacific region, and Inter-American Convention Against Corruption.***

Although not a member of the UNCAC, OECD, and FATF, Chinese Taipei endeavours to implement the provisions and spirits of the UNCAC, refers to the OECD Convention to amend its Anti-Corruption Act, and enforces the 40+9 Recommendations of the FATA.

- ***Recommend closer APEC cooperation, where appropriate, with the OECD including a joint APEC-OECD seminar on anticorruption, and similarly to explore joint partnerships, seminars, and workshops with the UN, ADB, OAS, the World Bank, ASEAN, and The World Bank, and other appropriate multilateral intergovernmental organizations.***

VI. OTHER APEC ACT LEADERS' AND MINISTERS' COMMITMENTS

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LEADERS' AND MINISTERS' COMMITMENTS

- **2005**: Ministers encouraged all APEC member economies **to take all appropriate steps towards effective ratification and implementation, where appropriate, of the United Nations Convention Against Corruption (UNCAC)**. Ministers encouraged relevant APEC member economies to make the UNCAC a major priority. They urged all member economies to submit brief annual progress reports to the ACT Task Force on their APEC anti-corruption commitments, including a more concrete roadmap for accelerating the implementation and tracking progress. (See Section I Above, UNCAC)
- **2006**: Ministers underscored their commitment **to prosecute acts of corruption, especially high-level corruption by holders of public office and those who corrupt them.** In this regard, Ministers commended the results of the Workshop on Denial of Safe Haven: Asset Recovery and Extradition held in Shanghai in April 2006. Ministers agreed to consider developing domestic actions, in accordance with member economy's legislation, to deny safe haven to corrupt individuals and those who corrupt them and prevent them from gaining access to the fruits of their corrupt activities in the financial systems, including by implementing effective controls to deny access by corrupt officials to the international financial systems.
- **2007**: We endorsed a model **Code of Conduct for Business, a model Code of Conduct Principles for Public Officials and complementary Anti-Corruption Principles for the Private and Public Sectors**. We encouraged all economies to implement these codes and welcomed agreement by Australia, Chile and Viet Nam to pilot the Code of Conduct for Business in their small and medium enterprise (SME) sectors. (AELM, AMM)
- **2008**: We commended efforts undertaken by member economies to develop comprehensive anti-corruption strategies including efforts to restore public trust, ensure government and market integrity. We are also committed **to dismantle transnational illicit networks and protect our economies against abuse of our financial system by corrupt individuals and organized criminal groups through financial intelligence and law enforcement cooperation related to corrupt payments and illicit financial flows.** We agreed to further strengthen international cooperation to combat corruption and money laundering in accordance with the Financial Action Task Force standards. International legal cooperation is essential in the prevention, investigation, prosecution and punishment of serious corruption and financial crimes as well as the recovery and return of proceeds of corruption. (AELM, AMM)
- **2009**: We welcome the Anti-Corruption and Transparency Experts' Task Force's **Singapore Declaration on Combating Corruption, Strengthening Governance and Enhancing Institutional Integrity, as well as the APEC Guidelines on Enhancing Governance and Anti-Corruption.** We encourage economies **to implement measures** to give practical effect to the Declaration and Guidelines. (AMM)
- **2010**: We agreed to leverage collective action **to combat corruption and illicit trade** by promoting clean government, fostering market integrity, and strengthening relevant judicial and law enforcement systems. We agreed to deepen our cooperation, especially in regard to discussions on achieving more durable and balanced global growth, increasing capacity building activities in key areas such as combating corruption and bribery, denying safe haven to corrupt officials, strengthening asset recovery efforts, and enhancing transparency in both public and private sectors. We encourage member economies, where applicable, **to ratify the UN Convention against Corruption and UN Convention against Transnational Organized Crime and to take measures to implement their provisions, in accordance with economies legal frameworks to dismantle corrupt and illicit networks across the Asia Pacific region.** (AELM, AMM)

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

- **2005**: Ministers encouraged all APEC member economies **to take all appropriate steps towards effective ratification and implementation, where appropriate, of the United Nations Convention against Corruption (UNCAC).** Ministers encouraged relevant APEC member economies to make the UNCAC a major priority. They urged all member economies to submit brief annual progress reports to the ACT Task Force on their APEC anti-corruption commitments, including a more concrete roadmap for accelerating the implementation and tracking progress. (See Section I Above, UNCAC)

Although not a member of the UNCAC, Chinese Taipei endeavors to implement the provisions and spirits of the UNCAC. In addition, Chinese Taipei will continuously submit brief annual progress reports to the ACTWG on its APEC anti-corruption commitments.

- **2006**: Ministers underscored their commitment **to prosecute acts of corruption, especially high-level corruption by holders of public office and those who corrupt them.** In this regard, Ministers commended the results of the Workshop on Denial of Safe Haven: Asset Recovery and Extradition held in Shanghai in April 2006. Ministers agreed to consider developing domestic actions, in accordance with member economy's legislation, to deny safe haven to corrupt individuals and those who corrupt them and prevent them from gaining access to the fruits of their corrupt activities in the financial systems, including by implementing effective controls to deny access by corrupt officials to the international financial systems.

See response above Section III.

- **2007**: We endorsed a model **Code of Conduct for Business, a model Code of Conduct Principles for Public Officials and complementary Anti-Corruption Principles for the Private and Public Sectors.** We encouraged all economies **to implement these codes** and welcomed agreement by Australia, Chile and Viet Nam to pilot the Code of Conduct for Business in their small and medium enterprise (SME) sectors. (AELM, AMM)

In an effort of implementing APEC's model Code of Conduct for Business, Chinese Taipei in 2010 and 2011 published several handbooks for the use of certain private sectors, including the sectors of medical device, construction and the education. Chinese Taipei will keep on the work of publishing handbooks in other sectors.

Regarding APEC's model Code of Conduct Principles for Public Officials, Chinese Taipei has establishes the "Integrity and Ethics Directions for Civil Servants" requiring all civil servants shall follow laws and ethics to execute duties impartially and base on the public interests.

- **2008**: We commended efforts undertaken by member economies to develop comprehensive anti-corruption strategies including efforts to restore public trust, ensure government and market integrity. We are also committed **to dismantle transnational illicit networks and protect our economies against abuse of our financial system by corrupt individuals and organized criminal groups through financial intelligence and law enforcement cooperation related to corrupt payments and illicit financial flows.** We agreed to further strengthen international cooperation to combat corruption and money laundering in accordance with the Financial Action Task Force standards. International legal cooperation is essential in the prevention, investigation, prosecution and punishment of serious corruption and financial crimes as well as the recovery and return of proceeds of corruption. (AELM, AMM)

See responses above regarding international legal cooperation and anti-money laundering.

THAILAND

ECONOMY: Thailand
CALENDAR YEAR: 2012
LAST UPDATED: April 27, 2012

LEADERS' AND MINISTERS' COMMITMENTS

- **2010**: We agreed to enhance our efforts to improve transparency and eliminate corruption, including through regular reporting via ACT and other relevant fora on economies' progress in meeting APEC Leaders' commitments on anti-corruption and transparency.
- **2006**: Ministers endorsed APEC 2006 key deliverables on Prosecuting Corruption, Strengthening Governance and Promoting Market Integrity and encouraged member economies to take actions to realize their commitments. Ministers also encouraged all economies to complete their progress reports on the implementation of ACT commitments by 2007. Ministers welcomed APEC efforts to conduct a stocktaking exercise of bilateral and regional arrangements on anti-corruption in cooperation with relevant international and regional organizations, and encouraged member economies to fully participate in the stocktaking activities.

Objective: Where appropriate, to self-assess progress against APEC Leaders' and Ministers' commitments on anti-corruption, transparency, and integrity and to identify capacity building needs to assist the ACT to identify priority areas for future cooperation.

EXECUTIVE SUMMARY

1. Summary of main achievements/progress in implementing the commitments of APEC Leaders and Ministers on anti-corruption, transparency, and integrity since 2004.
The new Organic Act on Counter Corruption brings about 4 amendments to the Organic Act on Counter Corruption B.E. 2542 (1999) as follow:
1. Improvement of legal provisions to be consistent with the Constitution
1.1 To improve the definition of "State Official"
1.2 To insert the provision of the Provincial Anti-Corruption Committee
2. Improvement and enhancement of the operational efficiency
2.1 Asset inspection
2.2 Corruption suppression
3. Strengthening of corruption prevention and suppression
3.1 Protection
3.2 Awards
3.3 Taking a person as a witness
3.4 To set the supplementary preventive measures against corruption
4. Organization management
4.1 Establishment of Provincial Anti-Corruption Committee
4.2 Management of information and documents in possession of the NACC or the Office of the NACC.
4.3 Personnel administration

2. Summary of forward work program to implement Leaders' and Ministers' commitments.
-Thailand is in the process of amending the Ant-Money Laundering Act to comply with international standards.
-Thailand is in the process of amending the Penal Code and the Mutual Assistance in Criminal Matters Act to fully comply with Articles 54 and 55 of the UNCAC
-Thailand is drafting the Proceed of Crime Act to enable value-based asset recovery, in addition to the property-based system.
-The NACC is hosting the APEC ACT Capacity Building Workshop on Effectively Combating Corruption and Illicit Trade through Tracking Cross-Border Financial Flows, International Asset Recovery and Anti-Money Laundering Efforts: their impact on poverty reduction and economic growth on July 10-11, 2012 in Phuket, Thailand

3. Summary of capacity building needs and opportunities that would accelerate/strengthen the implementation of APEC Leaders' and Ministers' commitments by your economy and in the region.
-Financial intelligence training for law enforcement officers
--Advanced anti-money laundering techniques for practitioners

I. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO UNCAC PROVISIONS

LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Take All Appropriate Steps Towards Ratification of, or Accession to, and Implementation of the UNCAC:

- Intensify our efforts to combat corruption and other unethical practices, strengthen a culture of transparency, ensure more efficient public management, and complete all appropriate steps to ratify or accede to, and implement the UNCAC.
- Develop training and capacity building efforts to help on the effective im-

plementation of the UNCAC's provisions for fighting corruption.

• Work to strengthen international cooperation in preventing and combating corruption as called for in the UNCAC including extradition, mutual legal assistance, the recovery and return of proceeds of corruption.

I.A. Adopting Preventive Measures (Chapter II, Articles 5-13)

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RELEVANT UNCAC PROVISIONS

Chapter II, Articles 5-13 including:

• Art. 5(2) Establish and promote effective practices aimed at the prevention of corruption.

• Art. 7(1) Adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials that:

  • Are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;

  • Include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;

  • Promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;

  • Promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions.

• Art. 7(4) Adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

• Art. 8(2) Endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.

• Art. 8(5) Establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials. Art. 52(5)/(6) [sharing the information on the financial disclosures that should be in place]

• Art. 10(b) Simplify administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities.

• Art. 12(2)(b) Promote the development of standards and procedures designed to safeguard the integrity of private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State.

• Art. 12(2)(c) Promote transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities.

• Art. 13(1) Promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

-The NACC has signed MoUs with ACRC of Korea, GIV of Vietnam, IAAC of Mongolia, Ministry of Supervision of China, ACC of Bhutan and ACA of Egypt.

-Office of the Public Sector Development Commission (OPDC) piloted an agreement on anti-corruption in public procurement between public and private agencies. This project is in line with the Integrity Pact initiated by Transparency International. At present, this project is in under the supervision of the Comptroller General's Department, Ministry of Finance. The OPDC is also studying for possible mechanisms to promote transparency in the public administration such as independent monitoring system, public scrutiny and risk management mechanisms.

- The NACC has promulgated the Management of Partnership Stakes and Shares of Ministers Act which sets the maximum allowance for Prime Minister, Cabinet members, their spouses and children who have not yet become sui juris to hold no more than 5 per cent of stocks and shares in any company.

- The Office of the Judiciary has adopted transparent, merit-based and professional criteria for the recruitment, promotion, disciplining and removal of judges. The Judicial Office Act has been in place since the year 2000.

- Office of the Prime Minister set the maximum value for all government officials in gift giving and receiving for 3,000 baht (approximately 100 US dollars).

- Office of the Council of State issued Administrative Order B.E. 2539 (1996) to ensure transparency and standard of issuing administrative orders, and to prevent an

abuse of authorities.
- Office of the Public Sector Anti-Corruption (PACC) developed measures in response to the resolutions set forth by the Strategic Public Sector Steering Committee as follow:
    1. Raising awareness and creating new values to fight corruption in Thai society.
    2. Establishing networks of watchdogs for areas vulnerable to corruption.
    3. Setting up complaints filing mechanisms and monitoring system.
    4. Initiate study of corruption patterns in order to set up an up-to-date reform in the public sector.
    5. Promoting transparency in the government.
    6. Establishing preventive measures for foreign investors and entrepreneurs.
- Office of the Ombudsman has been preparing the integrity assessment as follow:
    1. Monitoring integrity assessment and statistics.
    2. Giving suggestions to the methods of the assessment.
    3. Verifying and analysing qualitative and quantitative methods of integrity assessment.
    4. Preparing related information and integrity assessment web link for electronic database.
-Office of the Ombudsman has been assisting government agencies in establishing their own Codes of Ethics, in accordance with the Constitution.
- The Official Information Commission aims to encourage government agencies to disclose official information such as functions and decision-making process, to the public in accordance with Official Information Act B.E. 2540 (1997). The OIC also promotes better understanding of the rights to access official information among the general public.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

- The new draft amendment of National Anti-Corruption Strategy is in process.
- The OPDC is studying for possible mechanisms to promote transparency in the public administration such as independent monitoring system, public scrutiny and risk management mechanisms.

I. B. Criminalization and Law Enforcement (Chapter III)

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RELEVANT UNCAC PROVISIONS

- Art. 15 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
    - The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
    - The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.
- Art. 16(1) Adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally,
the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage,
for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.
- Art. 17 Adopt measures to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.
- Art. 20 Adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.
- Art. 21 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:
    - The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;
    - The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.
- Art. 27(1) Adopt such legislative and other measures as may be necessary to

establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

-The new Organic Act on Counter Corruption provides measures to protect the witness or whistle-blower in accordance with the National Anti-Corruption Commission Regulations for Witness Protection B.E. 2554 (2011).
- Article 147 of the Penal Code prohibits dishonest misappropriation of government's property for the benefits of oneself or others.
- Articles 148 and 149 of the Penal Code prohibits wrongful exercise of official function, coercion to deliver or to procure benefits for oneself or others and acceptance of benefits in exchange for exercise or non-exercise of official function.
- The NACC have the duty to examine a financial transaction or an acquisition of assets and liabilities of government officials. In certain circumstances, the NACC can make a request that such assets shall devolve upon the state on the ground of illegitimate acquisition of assets and liabilities or illicit enrichment. This also applies to any transaction under reasonable belief that it may contain the transfer, disposal, removal, concealment or hiding of any property that connects with an offense.
- The NACC may undertake a temporary seizure or attachment of property, if they inspect that the person holding a political position has an unusual increase of assets. In this circumstance the President of the NACC shall furnish existing documents together with the inspection report to the Attorney-General to institute an action in the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions, at the time that the Supreme Court has not made any order.
- For the purpose of accessing data or information of a person, the NACC is authorised to request agencies or financial institutions to facilitate the NACC or the subcommittee to inquire into the facts of alleged culprit or a person having reasonable cause to believe of the involvement of the allegation. In case the NACC found that some types of information are inaccessible, the NACC may file a motion requesting an order from the court to access into such information.

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

-Financial intelligence training for law enforcement officers

I.C. Preventing Money-Laundering

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RELEVANT UNCAC PROVISIONS

- Art. 14(1) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons, that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering.
- Art. 14(2) Implement feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders.
- Art. 14(3) Implement appropriate and feasible measures to require financial institutions, including money remitters, to:
  (a) include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;
  (b) maintain such information throughout the payment chain; and
  (c) apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

-By virtue of Section 41 of the Financial Institutions Business Act B.E. 2551 (2008), Bank of Thailand issued the Notification of Bank of Thailand on Guideline on Undertaking Deposits or Accepting Money from Public, Notified on August 3, 2008. Under this Notification, the financial institutions shall require depositor to fill a Financial Institu-

tion Deposit Application Form. Those who fail to comply with this rule shall be fined.
-Office of the Attorney General is responsible for criminal proceeding in corruption and money laundering cases in Thailand. OAG is the central authority for mutual legal assistance request and extradition under the provisions of the UNCAC, while NACC is the national focal point for corruption cases.

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

-Advanced anti-money laundering techniques for practitioners

II. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO APEC INEGRITY STANDARDS (CROSS CHECK WITH I.A. ABOVE)

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LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Strengthen Measures to Effectively Prevent and Fight Corruption and Ensure Transparency by Recommending and Assisting Member Economies to:

- Establish objective and transparent criteria that assure openness for merit, equity, efficiency for the recruitment of civil servants, and promote the highest levels of competence and integrity;
- Adopt all necessary measures to enhance the transparency of public administration, particularly with regard to organization, functioning and decision-making processes;
- Develop and implement appropriate public financial disclosure mechanisms or codes of conduct for senior-level public officials [SOM III: Guidelines];

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

- Office of the Public Sector Development Commission (OPDC) piloted an agreement on anti-corruption in public procurement between public and private agencies. This project is in line with the Integrity Pact initiated by Transparency International. At present, this project is in under the supervision of the Comptroller General's Department, Ministry of Finance. The OPDC is also studying for possible mechanisms to promote transparency in the public administration such as independent monitoring system, public scrutiny and risk management mechanisms.
- The NACC has promulgated the Management of Partnership Stakes and Shares of Ministers Act which sets the maximum allowance for Prime Minister, Cabinet members, their spouses and children who have not yet become sui juris to hold no more than 5 per cent of stocks and shares in any company.
- The Office of the Judiciary has adopted transparent, merit-based and professional criteria for the recruitment, promotion, disciplining and removal of judges. The Judicial Office Act has been in place since the year 2000.
- Office of the Prime Minister set the maximum value for all government officials in gift giving and receiving for 3,000 baht (approximately 100 US dollars).
- Office of the Council of State issued Administrative Order B.E. 2539 (1996) to ensure transparency and standard of issuing administrative orders, and to prevent an abuse of authorities.
- Office of the Public Sector Anti-Corruption (PACC) developed measures in response to the resolutions set forth by the Strategic Public Sector Steering Committee as follow:
    1. Raising awareness and creating new values to fight corruption in Thai society.
    2. Establishing networks of watchdogs for areas vulnerable to corruption.
    3. Setting up complaints filing mechanisms and monitoring system.
    4. Initiate study of corruption patterns in order to set up an up-to-date reform in the public sector.
    5. Promoting transparency in the government.
    6. Establishing preventive measures for foreign investors and entrepreneurs.
- Office of the Ombudsman has been preparing the integrity assessment as follow:
    1. Monitoring integrity assessment and statistics.
    2. Giving suggestions to the methods of the assessment.
    3. Verifying and analysing qualitative and quantitative methods of integrity assessment.
    4. Preparing related information and integrity assessment web link for electronic database.

-Office of the Ombudsman has been assisting government agencies in establishing their own Codes of Ethics, in accordance with the Constitution.
- The Official Information Commission aims to encourage government agencies to

disclose official information such as functions and decision-making process, to the public in accordance with Official Information Act B.E. 2540 (1997). The OIC also promotes better understanding of the rights to access official information among the general public.

III. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO SAFE HAVENS (CROSS CHECK WITH I.C. ABOVE):

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LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Deny safe haven to officials and individuals guilty of public corruption, those who corrupt them, and their assets:

- Promote cooperation among financial intelligence units of APEC members including, where appropriate, through existing institutional mechanisms.
- Encourage each economy to promulgate rules to deny entry and safe haven, when appropriate, to Officials and individuals guilty of public corruption, those who corrupt them, and their assets.
- Implement, as appropriate, the revised Financial Action Task Force (FATF) 40 Recommendations and FATF's Special Recommendations (Santiago Course of Action)
- Work cooperatively to investigate and prosecute corruption offenses and to trace freeze, and recover the proceeds of corruption (Santiago Course of Action)
- Implement relevant provisions of UNCAC. These include:
  - o Art. 14 (Money laundering)
  - o Art. 23 (Laundering of Proceeds of Crime)
  - o Art. 31 (Freezing, seizure and confiscation)
  - o Art. 40 (Bank Secrecy)
  - o Chapter V (Asset Recovery)

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

-By virtue of Section 41 of the Financial Institutions Business Act B.E. 2551 (2008), Bank of Thailand issued the Notification of Bank of Thailand on Guideline on Undertaking Deposits or Accepting Money from Public, Notified on August 3, 2008. Under this Notification, the financial institutions shall require depositor to fill a Financial Institution Deposit Application Form. Those who fail to comply with this rule shall be fined.
-Office of the Attorney General is responsible for criminal proceedings in corruption and money laundering cases in Thailand. OAG is the central authority for mutual legal assistance request and extradition under the provisions of the UNCAC, while NACC is the national focal point for corruption cases.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

-Thailand is in the process of amending the Ant-Money Laundering Act to comply with international standards.

IV. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO PRIVATE SECTOR CORRUPTION:

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LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Fight both Public and Private Sector Corruption:

- Develop effective actions to fight all forms of bribery, taking into account the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or other relevant anticorruption conventions or initiatives.

• Adopt and encourage measures to prevent corruption by improving accounting, inspecting, and auditing standards in both the public and private sectors in accordance with provisions of the UNCAC.
• Support the recommendations of the APEC Business Advisory Council (ABAC) to operate their business affairs with the highest level of integrity and to implement effective anticorruption measures in their businesses, wherever they operate.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

-Act on Offences Relating to the Submission of Bids to State Agencies B.E. 2542 (1999) ensures transparency and fairness in bidding for the right to enter into a contract with government agencies.
- Revenue Code B.E. 2481 (1938) requires that expenses accounts shall be real. In case of unknown recipients, such expenses shall not be included in the expenses accounts.
-Auditing Act B.E. 2543 (2000) governs auditing in the private sector.

V. ENHANCING REGIONAL COOPERATION

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LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Strengthen Cooperation Among APEC Member Economies to Combat Corruption and Ensure Transparency in the Region:

• Promote regional cooperation on extradition, mutual legal assistance and the recovery and return of proceeds of corruption.
• Afford one another the widest measure of mutual legal assistance, in investigations, prosecutions and judicial proceedings related to corruption and other offences covered by the UNCAC.
• Designate appropriate authorities in each economy, with comparable powers on fighting corruption, to include cooperation among judicial and law enforcement agencies and seek to establish a functioning regional network of such authorities.
• Sign bilateral and multilateral agreements that will provide for assistance and cooperation in areas covered by the UNCAC. (Santiago Course of Action) These include:
  o Art. 44 – Extradition
  o Art. 46 – Mutual Legal Assistance
  o Art. 48 – Law Enforcement Cooperation
  o Art. 54 – Mechanisms for recovery of property through international cooperation in confiscation
  o Art. 55 – International Cooperation for Purposes of Confiscation
• Work together and intensify actions to fight corruption and ensure transparency in APEC, especially by means of cooperation and the exchange of information, to promote implementation strategies for existing anticorruption and transparency commitments adopted by our governments, and to coordinate work across all relevant groups within APEC (e.g., SOM, ABAC, CTI, IPEG, LSIF, and SMEWG).
• Coordinate, where appropriate, with other anticorruption and transparency initiatives including the UNCAC, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, FATF, the ADB/OECD Anticorruption Action Plan for the Asia Pacific region, and Inter-American Convention Against Corruption.
• Recommend closer APEC cooperation, where appropriate, with the OECD including a joint APEC-OECD seminar on anticorruption, and similarly to explore joint partnerships, seminars, and workshops with the UN, ADB, OAS, the World Bank, ASEAN, and The World Bank, and other appropriate multilateral intergovernmental organizations.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

-Article 9 of the Extradition Act B.E. 2551 (2003) allows mutual extradition in most cases, except that of political or military-related charges.
-Thailand has bilateral extradition agreement with many countries such as Belgium, Cambodia, Laos, South Korea, the UK, Bangladesh, China, the USA, the Philippines and Indonesia.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

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Thailand is in the process of amending the Penal Code and the Mutual Assistance in Criminal Matters Act to fully comply with Articles 54 and 55 of the UNCAC.

VI. OTHER APEC ACT LEADERS' AND MINISTERS' COMMITMENTS

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LEADERS' AND MINISTERS' COMMITMENTS

• **2005**: Ministers encouraged all APEC member economies **to take all appropriate steps towards effective ratification and implementation, where appropriate, of the United Nations Convention against Corruption (UNCAC**). Ministers encouraged relevant APEC member economies to make the UNCAC a major priority. They urged all member economies to submit brief annual progress reports to the ACT Task Force on their APEC anti-corruption commitments, including a more concrete roadmap for accelerating the implementation and tracking progress. (See Section I Above, UNCAC)

• **2006**: Ministers underscored their commitment **to prosecute acts of corruption, especially high-level corruption by holders of public office and those who corrupt them**. In this regard, Ministers commended the results of the Workshop on Denial of Safe Haven: Asset Recovery and Extradition held in Shanghai in April 2006. Ministers agreed to consider developing domestic actions, in accordance with member economy's legislation, to deny safe haven to corrupt individuals and those who corrupt them and prevent them from gaining access to the fruits of their corrupt activities in the financial systems, including by implementing effective controls to deny access by corrupt officials to the international financial systems.

• **2007**: We endorsed a model **Code of Conduct for Business, a model Code of Conduct Principles for Public Officials and complementary Anti-Corruption Principles for the Private and Public Sectors**. We encouraged all economies to implement these codes and welcomed agreement by Australia, Chile and Viet Nam to pilot the Code of Conduct for Business in their small and medium enterprise (SME) sectors. (AELM, AMM)

• **2008**: We commended efforts undertaken by member economies to develop comprehensive anti-corruption strategies including efforts to restore public trust, ensure government and market integrity. We are also committed **to dismantle transnational illicit networks and protect our economies against abuse of our financial system by corrupt individuals and organized criminal groups through financial intelligence and law enforcement cooperation related to corrupt payments and illicit financial flows**. We agreed to further strengthen international cooperation **to combat corruption** and money laundering in accordance with the Financial Action Task Force standards. International legal cooperation is essential in the prevention, investigation, prosecution and punishment of serious corruption and financial crimes as well as the recovery and return of proceeds of corruption. (AELM, AMM)

• **2009**: We welcome the Anti-Corruption and Transparency Experts' Task Force's Singapore **Declaration on Combating Corruption, Strengthening Governance and Enhancing Institutional Integrity, as well as the APEC Guidelines on Enhancing Governance and Anti-Corruption**. We encourage economies to implement measures to give practical effect to the Declaration and Guidelines. (AMM)

• **2010**: We agreed to leverage collective action **to combat corruption and illicit** trade by promoting clean government, fostering market integrity, and strengthening relevant judicial and law enforcement systems. We agreed to deepen our cooperation, especially in regard to discussions on achieving more durable and balanced global growth, increasing capacity building activities in key areas such as combating corruption and bribery, denying safe haven to corrupt officials, strengthening asset recovery efforts, and enhancing transparency in both public and private sectors. We encourage member economies, where applicable, to ratify the UN Convention against Corruption and UN Convention against Transnation**al Organized Crime and to take measures to implement their provisions, in accordance with economies legal frameworks to dismantle corrupt and illicit networks across the Asia Pacific region**. (AELM, AMM)

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

-Thailand has ratified the UNCAC in March 2011.
- The new Organic Act on Counter Corruption brings about 4 amendments to the Organic Act on Counter Corruption B.E. 2542 (1999) as follow:
1. Improvement of legal provisions to be consistent with the Constitution

1.1 To improve the definition of “State Official”
1.2 To insert the provision of the Provincial Anti-Corruption Committee
2. Improvement and enhancement of the operational efficiency
2.1 Asset inspection
2.2 Corruption suppression
3. Strengthening of corruption prevention and suppression
3.1 Protection
3.2 Awards
3.3 Taking a person as a witness
3.4 To set the supplementary preventive measures against corruption
4. Organization management
4.1 Establishment of Provincial Anti-Corruption Committee
4.2 Management of information and documents in possession of the NACC or the Office of the NACC.
4.3 Personnel administration

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

-The NACC is hosting the APEC ACT Capacity Building Workshop on Effectively Combating Corruption and Illicit Trade through Tracking Cross-Border Financial Flows, International Asset Recovery and Anti-Money Laundering Efforts: their impact on poverty reduction and economic growth on July 10-11, 2012 in Phuket, Thailand

ECONOMY: United States
CALENDAR YEAR: 2012
LAST UPDATED: May 12, 2012

LEADERS' AND MINISTERS' COMMITMENTS

- **2010**: We agreed to enhance our efforts to improve transparency and eliminate corruption, including through regular reporting via ACT and other relevant fora on economies' progress in meeting APEC Leaders' commitments on anti-corruption and transparency.
- **2006**: Ministers endorsed APEC 2006 key deliverables on Prosecuting Corruption, Strengthening Governance and Promoting Market Integrity and encouraged member economies to take actions to realize their commitments. Ministers also encouraged all economies to complete their progress reports on the implementation of ACT commitments by 2007. Ministers welcomed APEC efforts to conduct a stocktaking exercise of bilateral and regional arrangements on anti-corruption in cooperation with relevant international and regional organizations, and encouraged member economies to fully participate in the stocktaking activities.

Objective: Where appropriate, to self-assess progress against APEC Leaders' and Ministers' commitments on anti-corruption, transparency, and integrity and to identify capacity building needs to assist the ACT to identify priority areas for future cooperation.

EXECUTIVE SUMMARY

1. Summary of main achievements/progress in implementing the commitments of APEC Leaders and Ministers on anti-corruption, transparency, and integrity since 2004.

The United States' main achievements include:
- Ratification of the UN Convention against Corruption, and a participatory and transparent U.S. review that included a site visit, robust civil society involvement, and agreement to publish the entire review report;
- Founding co-chairmanship of the Open Government Partnership (OGP) initiative and adoption of an ambitious, wide-ranging OGP Action Plan;
- Provision of a high level of technical assistance to other countries relating to preventing and combating corruption and promoting good governance and sound public administration;
- Leading level of enforcement of laws against foreign bribery;
- Leading level of cooperation in recovery of stolen assets;
- Adoption of a Strategy to Internationalize the Fight against Kleptocracy;
- Implementation in practice of denial of safe haven for corrupt public officials and their enablers;
- Adoption of a "Publish What You Pay" law requiring that oil, gas, and mining companies report payments to the U.S. or any foreign government for resource extraction.

2. Summary of forward work program to implement Leaders' and Ministers' commitments.

On April 4, 2012, the President signed the Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act) (S. 2038). The Act establishes new requirements for executive branch ethics programs, ethics officials, and the thousands of employees who currently file financial disclosure reports pursuant to the Ethics in Government Act. The U.S. Office of Government Ethics will be posting guidance on implementation of the STOCK Act on its website (www.oge.gov).

3. Summary of capacity building needs and opportunities that would accelerate/strengthen the implementation of APEC Leaders' and Ministers' commitments by your economy and in the region.

The Department of Justice regularly provides training to federal prosecutors at the National Advocacy Center in order to ensure proper enforcement of criminal laws related to public corruption. The Department of Justice also regularly provides training to federal prosecutors and federal, state, and local law enforcement on financial investigations, money laundering laws and methods, and the seizure and forfeiture of assets. In addition, the Department of Justice, in coordination with the Securities and Exchange Commission and the Federal Bureau of Investigation, provides annual training to prosecutors, enforcement attorneys, and law enforcement agents about how to effectively investigate and prosecute violations of transnational bribery (the Foreign Corrupt Practices Act), including sessions focused on commercial bribery in violation of the Travel Act.

I. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO UNCAC PROVISIONS

LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Take All Appropriate Steps Towards Ratification of, or Accession to, and Implementation of the UNCAC:

- Intensify our efforts to combat corruption and other unethical practices, strengthen a culture of transparency, ensure more efficient public management, and complete all appropriate steps to ratify or accede to, and implement the UNCAC.
- Develop training and capacity building efforts to help on the effective implementation of the UNCAC's provisions for fighting corruption.
- Work to strengthen international cooperation in preventing and combating corruption as called for in the UNCAC including extradition, mutual legal assistance, the recovery and return of proceeds of corruption.

I.A. Adopting Preventive Measures (Chapter II, Articles 5-13)

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RELEVANT UNCAC PROVISIONS

See below.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

- *Art. 5(2) Establish and promote effective practices aimed at the prevention of corruption.*

The United States has myriad good governance systems that focus on prevention of corruption at the level of the individual as well as internal controls to prevent systemic weaknesses that lead to corruption. Please see responses below for more detail.

- ***Art. 7(1) Adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials that:***
  - ***Are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;***
  - ***Include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;***
  - ***Promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;***
  - ***Promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions.***

The United States has a system of laws and regulations governing employment in the Federal Government. At the Federal level, each branch has its own government hiring system. This response primarily relates to the competitive hiring system used in the executive branch, the largest of the three branches of the U.S. Government. Under the separation of powers principles established by the United States Constitution, the legislative and judicial branches of government are generally not subject to the laws, rules, and regulations applicable to the civil service, which serves the President as part of the executive branch. However, Congress has, by legislation, expressly included certain legislative and judicial administrative personnel under components of the civil service system or under parallel systems. The legislative and judicial branch hiring laws integrate many of the principles of transparency and fair dealing found in the executive branch laws described below. Likewise, while systems at the sub-federal level (state, municipal, and other jurisdictions) will vary, most incorporate similar principles and practices.

The laws governing federal executive branch hiring are found in Title 5 of the U.S. Code (Government Organization and Employees). The implementing regulations for Title 5 of the U.S. Code (USC) are found in Title 5 of the Code of Federal Regulations (C.F.R.). These laws and regulations provide for efficiency, transparency and objective criteria such as merit, equity and aptitude in the recruitment, hiring, retention, promotion and retirement of public officials.

In addition, because of the President's constitutional role as head of the executive branch, numerous presidential executive orders, which have the force of law, address competitive examinations, qualifications, suitability, merit hiring, and ethics. One of

the most significant is Executive Order 10577, as amended, which amended the Civil Service Rules and authorized a new appointment system for the competitive service (codified in 5 C.F.R. parts 1 through 10).

The executive branch accounts for approximately 97 percent of full-time federal public officials, most of which are selected through systems leading to career appointments (http://www.opm.gov/feddata/html/2006/september/table1.asp). In general, there are two basic categories of career public officials in the federal executive branch, both of which are hired under merit system principles: (1) competitive service employees (referred to in the hiring and ranking systems as General Service (GS) employees), who are hired through a competitive examination process and must meet government-wide suitability and qualification standards; and (2) excepted service employees, who may be hired non-competitively but must still be found fit and qualified for their positions, either under government-wide standards or agency-specific standards. A relatively small number of public officials in the executive branch are under a career senior executive personnel system, which also requires candidates to meet qualification and suitability requirements.

There are also a relatively small number of non-career public officials who are not selected on a competitive basis. These are primarily those serving in high-level positions of confidence. However, those appointments are still subject to a vetting process. For example, an individual who the President wishes to appoint as a member of his cabinet must go through a rigorous background check, a financial conflict of interest review, and Senate confirmation.

i. Governing or administrating authorities of the systems and control mechanisms.

The U.S. Office of Personnel Management (OPM) serves as the President's advisor on federal human capi¬tal issues and is the central human resources manage¬ment agency for the executive branch. OPM develops civil service regulations consistent with the laws passed by Congress and is responsible for ensuring compliance with those laws and regulations. It also delegates to the other executive branch agencies the authority to operate various Human Resources functions, including the authority to com¬petitively examine and hire employees. While OPM has an oversight role with the other executive departments and agencies, it also provides advice and assistance to those organizations. OPM conducts (or oversees) background investigations for security clearances; runs the federal employees health benefits and life insurance programs; operates the federal retirement programs; and issues guidance or provides assistance on a wide range of Human Resources matters from recruitment to employee relations issues. OPM also designs government-wide human capital strategies and collects required data from each agency. While OPM provides a central clearinghouse for human capital practices, many specific Human Resources responsi¬bilities (hiring employees, for example) are delegated to each agency.

ii. Access to the public service through a merit-based system.

The principal focus of the U.S. competitive hiring process is the merit of the individual considered for each position. There are nine basic merit principles (in law at Title 5 USC Section 2301) that govern federal personnel management. Two of these principles are directly related to government hiring: (1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity; and (2) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

The law also prohibits certain personnel practices and actions such as discriminating against any employee or applicant based on race, age, gender, or handicapping condition (5 USC Section 2302, attachment 2). Personal favoritism, nepotism, and political influence are not permitted in the selection process. Any occurrence of non-merit favoritism is viewed as a "prohibited personnel practice." The head of each agency is responsible for the prevention of prohibited personnel practices; for the compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management; and for ensuring (in consultation with the Office of Special Counsel, an independent agency established by the Civil Service Reform Act) that agency employees are informed of the rights and remedies available to them under law (5 USC Section 2301).

OPM develops and issues minimum qualification standards, policies, and instructions for General Schedule (GS) positions (which cover the great majority of competitive service employees) through the Operating Manual: Qualification Standards for General Schedule Positions. The standards must be met by all individuals appointed to GS positions in the competitive service. Generally, the same policies, instructions, and standards in the qualifications manual apply both to general public initial hiring appointments and to current Federal employees.

Each agency is responsible for applying the appropriate minimum qualification standard. The agency is also responsible for developing selective factors, if appropriate. Selective factors include knowledge, skills, and abilities, competencies, or special qualifications without which a candidate could not perform the duties of a position in a satisfactory manner.

Selective factors are applied in addition to the minimum qualification standards. Applicants who do not meet a selective factor are not eligible to be considered for the position.

iii. Advertisement for the selection of public servants, indicating the qualifications for selection.

Most Federal agencies are required by law and OPM regulation to inform the public about job opportunities by announcing, or "posting," these opportunities on the OPM Web site, http://www.usajobs.opm.gov. This public notice, or vacancy announcement, of current job opportunities ensures open competition by informing job seekers when, where, and how to apply for these jobs. Agencies are encouraged to recruit using other means in addition to USAJOBS, as well (for example, newspaper advertisements, radio announcements, and job fairs).

The vacancy announcement will state the duties and responsibilities of the job, the minimum qualifications required to be considered (general or specialized experience or education required for the position) and the specific competencies, knowledge, skills, and abilities necessary to successfully perform the job. The announcement will also include information about any minimum age or medical requirements that may be involved, such as for certain law enforcement, firefighter, and air traffic controller positions. It will describe the evaluation method that will be used to rate and rank applicants. The vacancy announcement must clearly state the application deadline. Once this information is on the USAJOBS database, OPM transmits this information electronically to State employment service offices nationwide.

Note: USAJOBS is the Federal Government's employment information system and provides on-line worldwide job vacancy information, employment information fact sheets, job applications, and forms. This site also has résumé development and electronic transmission capabilities so that job seekers can apply for positions online. USAJOBS is updated every business day from a database of more than 25,000 worldwide job opportunities and is available to job seekers in a variety of formats to ensure access for applicants with differing physical and technological capabilities. Additionally the system sends over 260,000 email alerts regarding new postings to registered users each day. It is convenient, user friendly, accessible through a computer or telephone, and available 24 hours a day, 7 days a week.

iv. Ways to challenge a decision made in the selection system.

There are various avenues to challenge a decision made in the selection process depending on the violation alleged by the applicant. An applicant who believes that a federal agency has discriminated against him or her has the right to file a complaint with that agency. If the applicant is not satisfied with the agency investigation and decision, the applicant may appeal the decision to the U.S. Equal Employment Opportunity Commission. If an applicant believes the agency committed a prohibited personnel practice, he or she may also file a complaint with the Office of Special Counsel, another independent agency established by the Civil Service Reform Act.

v. Relevant exceptions to the above.

The executive branch gives preference in hiring to certain military veterans based upon conditions set in law at Title 5 USC Section 2108. Generally, this "veterans' preference" is granted to those who were either disabled while serving in the military or who served in a military campaign or during specific periods in our history. Preference is reserved to those military members who were honorably discharged from active duty. The veterans' preference was established in the federal hiring system to recognize the economic loss suffered by citizens who have served their country in uniform in times of strife; to restore veterans to a favorable competitive position for government employment; and to acknowledge the larger obligation owed to disabled veterans. Veterans who qualify for veterans' preference are entitled to an advantage over other applicants. Notification of this preference is included in all job announcements so all applicants are aware of it.
The OPM, by delegation of the President, may except certain positions from the competitive hiring system; however, the persons selected for these positions may not be employed in the competitive service unless they compete under the competitive hiring system described above.

Once an individual competes for and is appointed to the competitive service, he/she earns a status which allows that individual to move from position to position in the competitive service without having to re-compete with the general public under the procedures described above. Federal agencies may limit their recruitment to current employees who have been competitively hired, or agencies may concurrently consider these status candidates when also recruiting under the competitive system. Agencies may select and appoint any individual under an authorized appointing authority granted by the Congress, the President, or the OPM.

- ***Art. 7(4) Adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.***

The United States has many laws and policies that promote transparency and/or help prevent conflicts of interest, including:
- Administrative Procedures Act – described below under Art. 10 (a)
- Freedom of Information Act – described below under Art. 10 (a)

- A highly-regulated procurement system, the primary goal of which is to obtain the most advantageous goods and services for the government while promoting full and open competition through a fair and transparent process. Laws governing the U.S. procurement system are found in Titles 10, 41, and 31 of the U.S. Code. The U.S. procurement regulatory system, which implements laws of the U.S. Code, is found in the Federal Acquisition Regulatory System. This system consists of the Federal Acquisition Regulation (FAR), which is the government-wide procurement regulation, as well as agency-specific procurement regulations called agency supplements. The FAR is the primary policy document regulating Federal agencies for the procurement of goods and services; agency specific procurement regulations either implement or supplement the FAR but may not be inconsistent. This helps to ensure that offerors are subject to the same rules when doing business with different agencies. The FAR and agency supplements are found at http://acquisition.gov/far/index.html.
- Written, enforceable administrative standards regarding conflicts of interest – described below under Art. 8(2)
- Written, enforceable civil and criminal laws regarding conflicts of interest. The bribery and illegal gratuities statute (18 USC Section 201) and the "criminal conflict of interest statutes" (18 USC Sections 202-209) are codified in 18 USC Chapter 11. The civil statutes are codified in 5 USC app. 4.
- Training and education of public officials – discussed, in part, under Art. 8(2)
- Financial disclosure designed to prevent and detect conflicts of interest – described below under Art. 8(5). All senior officials file public reports, which are soon to be available on the internet. Approximately 250,000 individuals, based on risk-based positions, file confidentially. All disclosures, whether filed publicly or confidentially, are reviewed for conflicts of interest.

• ***Art. 8(2) Endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.***

In each of the three branches of the United States Federal Government (executive, legislative, and judicial) there are standards of conduct or codes of conduct that are enforced administratively. In addition, there are civil ethics statutes that apply to the outside activities of senior officers and employees of all three branches and criminal conflict of interest statutes that apply in differing degrees to officers and employees of all three branches.
Reinforcement (as opposed to enforcement) of the standards and codes of conduct is a part of the ethics programs administered by all three branches. The three branches accomplish reinforcement through periodic training, the ready availability of counseling services for officers and employees who have questions on the application of the codes, and the review of financial disclosure reports.

Administrative Standards of Conduct

Executive branch: Part 2635 of Title 5 of the Code of Federal Regulations (5 C.F.R. Part 2635) contains the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct). Supplemental standards of conduct for certain executive branch agencies follow in 5 C.F.R. Parts 3101-8701, and statutes that provide additional authority for administrative gift regulations are in Sections 7351 and 7353 of Title 5 of the U.S. Code (5 USC Sections 7351 and 7353). The Standards of Conduct cover the following subjects: gifts from outside sources; gifts between employees; conflicting financial interests; impartiality in performing official duties; seeking other employment; misuse of position (i.e. use of public office for private gain, use of nonpublic information, use of Government property, use of official time); and outside activities. Executive Order 12674, as amended, which is entitled "Principles of Ethical Conduct for Government Officers and Employees," sets forth the ethical principles upon which the Standards of Conduct are based. 5 C.F.R. 2635.101 contains a restatement of Executive Order 12674, as amended. The United States Office of Government Ethics (OGE) is responsible for issuing the Standards of Conduct. However, each executive branch agency (including the uniformed services) is responsible for training, counseling, and disciplining its employees with regard to the Standards of Conduct.
The Government official responsible for an employee's appointment (or that official's delegate) may impose disciplinary sanctions for violation of the administrative Standards of Conduct. Appropriate corrective or disciplinary actions must follow applicable government-wide regulations or agency procedures. Such actions may be in addition to any action or penalty prescribed by law.

Legislative branch: At the beginning of each Congress, the United States House of Representatives (House) adopts a code of conduct as a part of its rules. In the 107th Congress, that code and related conduct provisions are contained in Rules 23-25. These Rules cover, among other topics, the following: use of public office for private gain; gifts; campaign funds; certain employment practices; representational contact; limitations on the use of official and unofficial accounts; and limitations on outside earned income. The House also publishes a House Ethics Manual containing these provisions as well as guidance on their interpretation.

In 1958, the House and the United States Senate (Senate) passed a concurrent resolution containing a Code of Ethics for Government Service. This Code covers such topics as: loyalty to country and to moral principles; upholding the laws of the country; discriminatory conduct; acceptance of certain favors or benefits; honest effort and conscientious performance of duties; improper use of confidential information; use of public office for private profit; and exposure of corruption. The House continues to expect its Members and employees to adhere to this Code.

The Senate also has a Code of Official Conduct, which is a part of the Standing Rules of the Senate. The Code of Official Conduct is contained in Rules 34 through 43. These Rules cover, among other topics, the following: gifts; outside earned income; conflict of interest; prohibition of unofficial office accounts; foreign travel; franking privilege and radio and television studios; political fund activity; employment practices; and constituent service. The Senate publishes a Senate Ethics Manual containing these provisions as well as guidance on their interpretation.

Section 5 of Article I of the U.S. Constitution provides that each House of Congress (the Senate and the House) is responsible for determining the qualifications of its Members; for determining its rules of proceedings; for punishing its Members; and, with the concurrence of two-thirds of the Members, for expelling a Member. Each House of Congress has a committee that addresses the conduct of Members and staff and provides advisory services and education regarding the standards to which Members and staff are to adhere. The responsible committee in the Senate is the Senate Select Committee on Ethics. The responsible committee in the House is the House Committee on Standards of Official Conduct.

Judicial branch: There are three codes of conduct within the judicial branch of the U.S. Federal Government: the Code of Conduct for United States Judges; the Code of Conduct for Judicial Employees; and the Code of Conduct for Federal Public Defender Employees. The Code of Conduct for United States Judges covers, among other topics, the following: judicial integrity and independence; the avoidance of impropriety and the appearance of impropriety; impartiality; adjudicative and administrative responsibilities; disqualification; extrajudicial activities and compensation related to extrajudicial activities; conflicts of interest; gifts; and refraining from political activity. The Code of Conduct for Judicial Employees covers, among other topics, the following: judicial integrity and independence; the avoidance of impropriety and the appearance of impropriety; performance of duties; conduct toward the public; use of confidential and other types of information; conflicts of interest; personal prejudice; outside activities; gifts; practice of law; and inappropriate political activity. The Code of Conduct for Federal Public Defender Employees covers, among other topics, the following: the avoidance of impropriety and the appearance of impropriety; performance of duties; behavior toward persons with whom one deals; nondiscrimination; gifts; conflicts of interest; engagement in law-related activities; the regulation of and compensation for extra-official activities; and inappropriate political activity. Published advisory opinions issued by a national committee of federal judges provide further guidance concerning the subjects addressed in the Codes of Conduct.

The President, pursuant to the U.S. Constitution, appoints Justices and judges within the federal court system by and with the advice and consent of the Senate. Justices and judges receive a lifetime appointment without diminution of pay and can only be removed by Congress after impeachment by the House and trial in the Senate. The federal court system governs the non-criminal conduct of its members at the national level through the Judicial Conference of the United States. The Judicial Conference is a body of 27 federal judges, composed of the following: the Chief Justice of the United States, who serves as the presiding officer; the chief judges of the 13 courts of appeals; the chief judge of the Court of International Trade; and 12 district judges from the regional circuits who are chosen by the judges of their circuits to serve terms of three years. The Judicial Conference has a Committee on Codes of Conduct that renders advisory opinions concerning the application and interpretation of the Codes of Conduct for United States Judges, for Judicial Employees, and for Federal Public Defender Employees. The procedures for filing and responding to complaints against judges are prescribed by statute, 28 USC 372(c). Actions the court system may take against a judge include private or public reprimand or censure, request for voluntary retirement, suspension of case assignments, and certification of disability of a judge to hold office. If appropriate, the Judicial Conference may transmit to the House a determination that consideration of impeachment may be warranted. Employees of the judicial branch are subject to disciplinary action, including removal. No officer or employee of the federal government is immune from prosecution for crimes committed while an officer or employee.

- ***Art. 8(5) Establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials. Art. 52(5)/(6) [sharing the information on the financial disclosures that should be in place]***

The Ethics in Government Act of 1978, as amended, (5 USC app. Section 101 et seq.) requires public financial disclosure on the part of the most senior elected and appointed officials of all three branches of the U.S. Federal Government. It is important to note at the outset that the purposes for collecting financial disclosure reports and for making reports public at the federal level in the United States are to detect and prevent conflicts of interest and to support public confidence in government, not to detect illicit enrichment. The reports can be useful in the latter regard under certain circumstances, however. An outline of the system follows.

Who must file:

Executive branch: President; Vice President; officers and employees of the executive branch (including, but not limited to, those appointed by the President with confirmation of the Senate) whose basic rate of pay meets a certain threshold amount (includ-

ing Generals and Admirals of the uniformed services); administrative law judges; certain employees in the executive branch occupying positions that are exempt from the competitive service by reason of being of a confidential or policymaking character, regardless of level of pay (generally political appointees at or below Level 15 of the General Schedule pay system); certain officers and employees of the Postal Service and the Postal Rate Commission; the Director of the U.S. Office of Government Ethics; each designated agency ethics official; and certain high-level appointees within the Executive Office of the President (civilian commissioned officers).

Legislative branch: Members of Congress and certain senior officers and employees within the legislative branch (generally determined by basic level of pay).

Judicial branch: Chief Justice of the United States; Associate Justices of the Supreme Court; judges of the United States courts of appeals, United States district courts, Court of Appeals for the Federal Circuit, Court of International Trade, Tax Court, Court of Federal Claims, Court of Appeals for Veterans Claims, United States Court of Appeals for the Armed Forces, and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior; and judicial officers and employees whose basic rate of pay is at or above a specified threshold amount.
Candidates for elected office and nominees for appointed office: Candidates for election to the House or Senate; candidates for election to the Offices of President and Vice President; and most nominees to positions in all three branches that require nomination by the President and confirmation by the Senate (though in some instances a public report is not required for part-time positions).

When they must file:

Candidates: Within 30 days of becoming a candidate, or by May 15 of that calendar year, whichever is later, but at least 30 days before the election, and on or before May 15 of each succeeding year the individual continues to be a candidate.

Nominees to positions requiring Senate confirmation: At any time following a public statement by the President or President-elect of his intention to nominate the individual, but no later than 5 days after the President transmits the nomination to the Senate.

New entrants to other covered positions: Within 30 days after assuming the position.

Incumbents: No later than May 15 annually and within 30 days of terminating employment in a position that requires a report.
Extensions of up to 60 days are available for most filings.

What must be reported (in general):

- Description of each source, type, and amount of investment income reported (indicating the proper category of amount and whether the income is from interest, dividends, rent and royalties, and/or capital gains), where the amount exceeds a specified threshold value (currently $200).
- Description of each source, type, and actual amount of any other type of income not described above, where the amount exceeds $200.
- Identity of the source and brief description of gifts worth over $104 received from that source, when the gifts have an aggregate value in excess of $260.
- Identity of the source and brief description of travel reimbursements worth over $104 received from that source, when the travel reimbursements have an aggregate value in excess of $260.
- Identity and category of value of any interest held for the production of income, if the value is in excess of $1,000 (or if the interest produced more than $200 in income). The threshold-reporting amount for deposits in banks and other similar types of regulated financial institutions is $5,000. Exceptions to reporting requirements include a personal residence and financial instruments of indebtedness from certain members of the family.
- Identity and category of value of total liabilities owed to any creditor, if the liabilities exceeded $10,000 at any time during the reporting period. Exceptions include loans secured by personal motor vehicles; loans for household furniture or appliances, when the loan does not exceed the purchase price of the item that secures it; and liabilities to certain specified family members.
- Description of each purchase, sale, or exchange of real property or securities other than transactions between the filer and the spouse or dependent children, and other than transactions involving the personal residence of the reporting individual, when the amount of the transaction exceeds $1,000. Value is reported by category of amount. Transactions are required to be reported on a more frequent basis than annually.
- Identity of positions held (outside the U.S. Government) as an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any business enterprise, any nonprofit organization, any labor organization, or any educational institution. The report does not require the reporting of positions held in religious, social, fraternal, or political entities or positions solely of an honorary nature.
- Description of the date, parties to, and terms of any agreement or arrangement with respect to future employment; a leave of absence during the period of the reporting individual's government service; continuation of payments by a former employer other than the U.S. Government; and continuing participation in an employee welfare or benefit plan maintained by a former employer.

- For first-time filers, the identity of each recent source of compensation in excess of $5,000 paid for the personal services of the filer (i.e. clients) and a brief description of the nature of the services rendered.

Filers must include the information described above for spouses and dependent children for the following: investment income; gifts given and reimbursements received due to the relationship to the filer; and transactions. The report must also show the sources, but not amounts, of spousal earned income.

Where the reports are filed:

In general, reports are filed with the agency, court, or legislative entity that employs the individual or with the agency, court, or legislative entity with which the individual will serve (e.g. in the case of candidates for the House and Senate). Candidates for President and Vice President file with the Federal Election Commission. Copies of reports filed by executive branch personnel who hold positions requiring Presidential appointment and Senate confirmation are transmitted from the employing agency to the United States Office of Government Ethics (OGE). All reports for presidentially appointed, senate-confirmed positions have been publically available since 1979. As of August 2012, reports filed in the legislative and executive branches will be posted online on the website of the entity in which the filer serves.

- ***Art. 10(b) Simplify administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities.***

Several mechanisms in the United States facilitate public access to competent public policy making and decision-making. One of the principal mechanisms for seeking consultation in the executive branch is the Administrative Procedures Act (5 USC Section 551), which requires with limited exceptions that all rules and regulations proposed by federal agencies must be announced in the Federal Register with opportunity for public comment. The agency must also issue its responses to the comments.

Other statutes that encourage public consultation and input into agency actions include the Federal Advisory Committee Act (5 USC Section 801, as amended by the Government in the Sunshine Act - Pub.L.94-409) which requires that all public advisory committees, some of which are created by law and others by agency decision, must hold their meetings in public and provide an opportunity for the public to attend, and under certain circumstances, to be heard. These public meetings provide civil society and non-governmental organizations an important mechanism to consult with both the agency personnel and the members of the public advisory committees on matters within their sphere of competence, including, of course, matters dealing with corruption prevention. Another mechanism that encourages direct input by civil society is the "hot line" procedure established by the Inspectors General under the Inspector General Act of 1978. This allows citizens to report confidentially allegations of fraud, abuse, waste or mismanagement by Federal employees, contractors or grantees.

In addition, the Freedom of Information Act (5 USC Section 552) ("FOIA") generally provides that any person has a right, enforceable in court, to obtain access to federal agency records. While there are a number of exemptions to disclosure, generally discretionary and not mandatory, dissatisfied record requesters are given relatively speedy remedy in the United States district courts. Judges determine de novo the propriety of agency withholdings and agencies bear the burden of proof that the withholding is justified. FOIA is administered through a decentralized system, so that each federal agency is responsible for implementing the Act's requirements. Requests for records under the Act may consist of a simple letter from the requestor, who is not required to state his or her reasons for making the request.

In the legislative branch, lobbying and access to the legislative process allows civil society to participate in policy making and decision making, both generally and in particular on anti-corruption legislation.

- ***Art. 12(2)(b) Promote the development of standards and procedures designed to safeguard the integrity of private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State.***

In addition to subjecting American companies to criminal and civil prosecutions, the Foreign Corruption Practices Act (FCPA) encourages American businesses engaged in international business to develop comprehensive corporate compliance programs in which corporations establish procedures to prevent the payment of bribes, conduct internal investigations when allegations of bribery are brought to management's attention, and voluntarily disclose to the government any bribery uncovered as a result of their investigation. Several federal agencies outline criteria for industry-specific compliance programs that are tailored to industry-specific regulations and good practices and include recommendations regarding codes of conduct and systems to identify and prevent conflicts of interest.

For example, the Department of Justice has a comprehensive website on the FCPA that includes a useful one-page description of the statute, a "Lay-Person's Guide to the FCPA" that summarizes the anti-bribery provisions of the FCPA in more detail,

the legislative history behind the law, and links to specific enforcement actions (http://www.justice.gov/criminal/fraud/fcpa). Certain entities can request from the Department of Justice an opinion of the Attorney General as to whether certain specified, prospective--not hypothetical--conduct conforms with the Department's present enforcement policy regarding the anti-bribery provisions of the FCPA (http://www.justice.gov/criminal/fraud/fcpa/docs/frgncrpt.pdf). Through its enforcement actions, the Department of Justice has identified the elements of a rigorous anti-corruption compliance code, standards, and procedures designed to detect and deter violations of the FCPA and other applicable anti-corruption laws. These standards are frequently identified in the Department of Justice's public resolutions. Senior officials from the Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission have also met with members of corporate compliance organizations, nongovernmental organizations, and members of civil society to discuss the enforcement of the FCPA. Similarly, senior officials from the Department of Commerce have participated in numerous conferences where they have discussed the FCPA as well as the importance of corporate compliance programs.

The Health and Human Services (HHS) Office of Inspector General OIG has also developed a series of voluntary compliance program guidance documents directed at various segments of the health care industry, such as hospitals, nursing homes, third-party billers, and durable medical equipment suppliers, to encourage the development and use of internal controls to monitor adherence to applicable statutes, regulations, and program requirements. HHS also provides free training for health care providers, compliance professionals, and attorneys, on the realities of Medicare and Medicaid fraud and the importance of implementing an effective compliance program (http://oig.hhs.gov/compliance/101/index.asp).

In June of 2011, the U.S. Department of Commerce's Bureau of Industry and Security published "Compliance Guidelines: How to Develop an Effective Export Management and Compliance Program and Manual." These Guidelines assist companies in establishing, or enhancing, an Export Management and Compliance Program (EMCP). The Guidelines promote good export compliance practices, including recommendations related to codes of conduct and identifying and preventing conflicts of interest (http://www.bis.doc.gov/complianceandenforcement/emcp_guidelines.pdf).

- ***Art. 12(2)(c) Promote transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities.***

State Law

Individual states have the power to promulgate laws relating to the creation, organization, and dissolution of corporations and other legal entities. State corporation laws require that articles of incorporation be adopted to document the corporation's creation and to define the rights and obligations of officers, directors, shareholders, and other persons within its structure. States also have registration laws requiring corporations that incorporate in other states (or countries) to register to do in-state business.

With respect to the specific provisions of the various U.S. states' corporation laws, 30 states have adopted in whole or in large part the Model Business Corporation Act (MBCA), developed by the American Bar Association in 1984 and since periodically amended, to encourage uniformity among states. Responses to this questionnaire refer to the MBCA and Delaware law, and these responses are intended to be understood as representative of the laws of the states. The MBCA and Delaware law are appropriate proxies for other state laws in this respect because of the wide acceptance of the MBCA and the wide use of Delaware as a jurisdiction for corporate formation.

The law treats a corporation as a legal "person" that has standing to sue and be sued, distinct from its shareholders. The legal independence of a corporation generally protects shareholders from being personally liable for corporate debts. It also allows shareholders to sue the corporation (generally through a "derivative" suit) and helps make ownership interests (shares) in the company easily transferable. As juridical "persons," corporations have perpetual life; deaths of officials or shareholders do not alter the corporation's existence or structure.

The LLC is a fairly recent business form that is now authorized by the laws of every state. Like a corporation, it protects its owners (referred to as members) from some debts and obligations.

Federal Law

As a general matter (and subject to various exceptions), state laws govern the internal affairs of corporations and other legal entities, while federal laws primarily govern matters involving the trading of securities, including requirements for disclosure of information material to the value of such securities. In this regard, the federal government has made significant contributions to the national body of corporate law. For instance, Congress enacted the Securities Act of 1933, which regulates how publicly-held corporate securities are issued and sold by requiring disclosure of specified information concerning such securities and prohibiting fraud in the offer and sale of such securities.

- ***Art. 13(1) Promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption***

There is a broad legal framework, as well as appropriate implementing mechanisms, to support and encourage active participation by civil society and non-governmental organizations in the workings of government in the United States in general, and in the efforts to prevent corruption in particular. An active civil society in the United States developed from and is sustained by certain constitutional rights, such as free speech, and related laws that facilitate public discourse and interaction with government, and the creation and operation of NGOs, media organizations, and other elements of civil society.

Essential to civil society participation in government is the public's access to information and documents under the control of the government. Such access is at the very heart of the democratic process in the United States. Also extremely important are the numerous laws and mechanisms that provide for citizen consultation, participation in, and oversight of, public administration. Such mechanisms include, among many others, requirements for open hearings in legislative bodies, public review and comment in government rulemaking, public release of judicial decisions, public release of campaign finance information, public release of national budget information, public release of all procurement opportunities and awards, and the "Qui tam" ability of private citizens to sue the government for redress of the corrupt and fraudulent acts of public officials (31 USC Section 3730). Qui tam permits a private citizen to file a complaint under the False Claims Act, alleging corruption to obtain a public contract. If successful, the citizen may recover a percentage of the proceeds of the settlement or judgment.

The Freedom of Information Act (5 USC Section 552) ("FOIA") generally provides that any person has a right, enforceable in court, to obtain access to federal agency records. While there are a number of exemptions to disclosure, generally discretionary and not mandatory, dissatisfied record requesters are given relatively speedy remedy in the United States district courts. Judges determine de novo the propriety of agency withholdings and agencies bear the burden of proof that the withholding is justified. FOIA is administered through a decentralized system, so that each federal agency is responsible for implementing the Act's requirements. Requests for records under the Act may consist of a simple letter from the requestor, who is not required to state his or her reasons for making the request.

Other statutes provide mechanisms for the public to access information and documents under the control of the Federal Government. For example, the Ethics in Government Act (5 USC app. Section 101 et seq) provides for the release of certain financial disclosure reports of public officials. Here too, the system is decentralized and usually the report can readily be obtained from the agency employing the official whose report is sought.

In addition, federal agencies make extensive use of websites on the Internet to provide substantive information, to inform the public about official activities and how to obtain additional documents. As an example, there were over a million visits to the Department of State website within the United States in the month of July 2002. Many government institutions are also required to publicly release numerous government reports and announcements regarding the inner workings of government. A few examples include the daily Congressional Record transcripts of all Congressional proceedings and introduced bills, the Commerce Business Daily announcements of government procurement opportunities, and semi-annual reports describing the work of each Inspector General.

There are also several mechanisms for those who perform public functions to consult civil society and non-governmental organizations on matters within their sphere of competence, which can be used for the purpose of preventing, detecting, punishing, and eradicating public corruption. One of the principal mechanisms for seeking consultation in the executive branch is the Administrative Procedures Act (5 USC Section 551), which requires with limited exceptions that all rules and regulations proposed by federal agencies must be announced in the Federal Register with opportunity for public comment and that each agency issue its responses to the comments.

Other statutes that encourage public consultation and input into agency actions include the Federal Advisory Committee Act (5 USC Section 801, as amended by the Sunshine Act – Pub.L.94-409) which requires that all public advisory committees, some of which are created by law and others by agency decision, must hold their meetings in public and provide an opportunity for the public to attend, and under certain circumstances, to be heard. These public meetings provide civil society and non-governmental organizations an important mechanism to consult with both agency personnel and members of the public advisory committees on matters within their sphere of competence, including, of course, matters dealing with corruption prevention. Another mechanism that encourages direct input by civil society is the "hot line" procedure established by the Inspectors General under the Inspector General Act of 1978. This allows citizens to report confidentially allegations of fraud, abuse, waste or mismanagement by federal employees, contractors or grantees.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

On April 4, 2012, the President signed the Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act) (S. 2038). The Act establishes new requirements for executive branch ethics programs, ethics officials, and the thousands of employees who currently file financial disclosure reports pursuant to the Ethics in Government Act. The U.S. Office of Government Ethics will be posting guidance on implementation of the STOCK Act on its website (www.oge.gov).

I. B. Criminalization and Law Enforcement (Chapter III)

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RELEVANT UNCAC PROVISIONS

See below.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

- ***Art. 15 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:***
  - ***The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;***
  - ***The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.***

The United States has multiple bribery statutes that prohibit the offer, acceptance, and/or solicitation of a bribe, defined under the law as anything of value, with the intent to influence an official act. The core bribery statute, 18 USC Section 201, defines two degrees of the offense: (1) bribery, and (2) offering, accepting, and/or soliciting an illegal gratuity. The distinction between these two offenses lies in the relationship between the thing of value and the official act. That is to say, where the thing of value is offered, accepted, or solicited in exchange for the official act, the conduct is bribery and accorded a more severe penalty. However, when the thing of value is offered, accepted, or solicited for or because of the official act, the conduct is offering, accepting, and/or soliciting an illegal gratuity and is accorded a lesser penalty. As one Circuit Court of Appeal has explained,

The two prohibitions differ in two fundamental respects. First, bribery requires a quid pro quo, and accordingly can be seen as having a two-way nexus. That is, bribery typically involves an intent to affect the future actions of a public official through giving something of value, and receipt of that thing of value then motivates the official act ... A gratuity, by contrast, requires only a one-way nexus; the gratuity guideline presumes a situation in which the offender gives the gift without attaching any strings .... The two provisions additionally differ in their temporal focus. Bribery is entirely future-oriented, while gratuities can be either forward or backward looking. (United States v. Schaffer, 183 F.3d 833, 841 (D.C. Cir. 1999), vacated in part on other grounds by, 240 F.3d 35 (D.C. Cir. 2001)).

In the case of either a bribe or illegal gratuity, the "thing of value" has been interpreted by federal courts to be anything -- whether it be a good, service, or opportunity --

that has value to the recipient. This could include money and other tangible objects, but also services or favorable terms on a loan, an offer of employment, etc. It is not necessary that the public official actually receive the thing of value or undertake the official act; a mere agreement or promise is sufficient for criminal liability to attach. Finally, with respect to bribery, the thing of value can either directly or indirectly benefit the public official and includes, for example, a payment of money to a third party on the official's behalf. The maximum penalties for bribery and illegal gratuities are 15 years and two years imprisonment, respectively.

When a public official solicits or extorts property under color of official right in a manner that affects interstate commerce, that conduct is not only covered by the statutes described above, but it is also penalized under 18 USC Section 1951, also known as the Hobbs Act. To show a violation of the Hobbs Act under this provision, the United States Supreme Court has held that "the Government must prove that a public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts." (Evans v. United States, 504 U.S. 255, 268 (1992)). The government must also show that the conduct had an impact on interstate commerce, though under existing law this is a fairly low hurdle. Like the "thing of value" in the Section 201 bribery offense, courts have interpreted the term "property" in the context of Section 1951 very broadly to include both tangible and intangible things of value.

This statute is particularly useful to highlight the culpability of the public official. In addition, because it involves simply an official acting under "color of official right," i.e. using the official's position, there is no requirement that the extorted payment be tied to any particular official act. Unlike the other offenses, under U.S. Department of Justice policy, any federal prosecution of this offense must be cleared with the Justice Department's Public Integrity Section within the Criminal Division. The maximum penalty for a Hobbs Act extortion violation is 20 years imprisonment.

- ***Art. 16 (1) Adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally,***
the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage,
for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

The Foreign Corrupt Practices Act of 1977 as amended (the FCPA), 15 USC 78dd-1 et seq, requires all publicly-traded corporations to maintain transparent books and records and prohibits all U.S. companies and nationals (or any non-U.S. person who uses the means and instrumentalities of U.S. interstate commerce) from making any payment or gift, or offering to do so, to a broad range of foreign public officials. Specifically, the FCPA prohibits:
1. The use of the mails or other means or instrumentality of interstate commerce
2. corruptly
3. in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value
4. to any foreign official, foreign political party, foreign political party official, or any other person knowing that all or a portion of such gift will be offered, given or promised, directly or indirectly, to such persons
5. for the purpose of influencing any act or decision of such officials, inducing such officials to do or omit to do any act in violation of the lawful duty of such officials, obtaining an improper advantage, or inducing such officials to use their influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality
6. to assist the payer of such payment or gift in obtaining or retaining business for or with, or directing any business to, any person.

In addition to criminal penalties, the FCPA provides for significant civil and penal remedies, including injunctions, fines, and imprisonment. Civil enforcement responsibility over public companies is entrusted to the United States Securities and Exchange Commission (the "SEC"), and criminal enforcement over all companies and individuals, as well as civil enforcement over non-public companies, is entrusted to the Department of Justice.

- ***Art. 17 Adopt measures to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.***

The primary anti-embezzlement statute applicable to officials of the United States Federal Government is 18 USC Section 654 (officer or employee of United States converting property of another). Other anti-embezzlement laws include 18 USC Section 641 (embezzlement of public money, property or records by any person); Section 645 (embezzlement by federal court officers); and Section 666 (theft or bribery concerning programs receiving federal funds). In addition to those laws, the United States has several other criminal laws that could potentially be used to punish the conduct described in Article 17, including, but are not limited to, 18 USC Sections

371 (conspiracy to commit an offence against the United States), 1341 (mail fraud), 1343 (wire fraud), and 1346 (scheme or artifice to defraud another of the intangible right to honest services), among many others, depending upon the facts and circumstances of a given case. Finally, consistent with the United States' system of federalism, individual states also have laws prohibiting the conduct described in Article 17.

- ***Art. 20 Adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.***

The United States recognizes the importance of combating improper financial gains by public officials, and has criminal statutes to deter or punish such conduct. These statutes obligate senior-level officials in the Federal Government to file truthful financial disclosure statements, subject to criminal penalties. They also permit prosecution of federal public officials who evade taxes on wealth that is acquired illicitly. Moreover, evidence of unexplained wealth can, and often is, introduced at trial as circumstantial evidence supporting other charges of public corruption. The offense of illicit enrichment as set forth in the UNCAC, however, places the burden of proof on the defendant, which is inconsistent with the United States Constitution and fundamental principles of the United States legal system.

- ***Art. 21 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:***
  - ***The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;***
  - ***The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.***

The United States Congress twice considered but did not adopt legislation establishing private sector bribery as a criminal offense. Although the United States has not established private sector bribery as an offense, other criminal and civil statutes provide adequate remedies to address misconduct involving, for example, criminal or civil fraud, breach of fiduciary duty, or racketeering (RICO).
Commercial bribery has been criminalized in most, although not all, U.S. states pursuant to state law. The conduct described in article 21 could also be punishable under various federal criminal theories, including but not limited to mail and wire fraud, antitrust violations, conspiracy, and securities fraud, depending upon the facts of a given case. In particular, commercial bribery can be charged federally under the Travel Act, Title 18 USC Section 1952(b)(2) (interstate and foreign travel or transportation in aid of racketeering enterprises), which criminalizes bribery at a federal level in violation of the laws of the state in which committed, based on state commercial bribery violations. Even in the states where commercial bribery is not a crime, the conduct is often punishable under unfair trade practices laws, which define bribery as an improper means of gaining a competitive advantage.

- ***Art. 27(1) Adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.***

Title 18, USC Section 2, is the first of the accessory liability statutes. Section 2 confers criminal liability upon anyone who aids, abets, commands, induces, or procures the commission of a crime or who willfully causes an act to be done that, if done by himself or herself, would constitute a crime. A violation of Section 2 requires proof that someone committed a crime and that the defendant knowingly and deliberately associated himself or herself in some way with the charged crime and participated in it with the intent to commit the crime. While aiding and abetting might commonly be thought of as an offense in itself, in actuality, it is not an independent crime. Section 2 provides no penalty. Instead, it merely abolishes the distinction between common law notions of "principal" and "accessory."

The second accessory liability statute is 18 USC Section 3, which penalizes anyone who, knowing that an offense against the United States has been committed, receives, relieves, comforts, aids or assists the offender to prevent his or her apprehension, trial, or punishment, is an "accessory after the fact." The maximum penalty for an accessory after the fact is half of the maximum penalty for the underlying offense committed by the principal. When the underlying offense is punishable by life imprisonment, the maximum penalty for the accessory after the fact is 15 years imprisonment.

Title 18 USC Section 4, misprision of a felony, imposes an obligation to report federal felony offenses. That is to say, Section 4 penalizes anyone who has knowledge of the commission of a federal felony offense and does not report the crime to a judge or other civil or military authority. The maximum penalty for a violation of Section 4 is three years imprisonment.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

The Department of Justice continually re-evaluates the legislative framework to ensure that it is meeting its international commitments and has the most effective method for effectively investigating and prosecuting corruption cases. For example, the Department of Justice has proposed legislation that would that would strengthen its ability to investigate and prosecute violations of the FCPA by providing additional investigative tools and extending the statute of limitations.

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

The Department of Justice regularly provides training to federal prosecutors at the National Advocacy Center in order to ensure proper enforcement of criminal laws related to public corruption, including 18 USC Section 201 and related statutes. In addition, the Department of Justice, in coordination with the Securities and Exchange Commission and the Federal Bureau of Investigation, provides annual training to prosecutors, enforcement attorneys, and law enforcement agents about how to effectively investigate and prosecute violations of transnational bribery (the FCPA), including sessions focused on commercial bribery in violation of the Travel Act.

Furthermore, the Department of Justice's Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) provides justice sector reform assistance in the Asia-Pacific region on, inter alia, anti-corruption efforts, criminal procedure reform, and institutional reform of prosecution services and law enforcement entities.

I.C. Preventing Money-Laundering

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RELEVANT UNCAC PROVISIONS

See below.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

- ***Art. 14(1) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons, that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering.***

When it was enacted in 1992, 18 USC Section 1960 made it a federal offense to conduct a money transmitting business without a state license. For various reasons, the statute proved to be of limited use to federal law enforcement. The amendments to section 1960 made by Section 373 of the USA PATRIOT Act, however, have made the statute a much more effective tool against the illegal operation of a money transmitting business and consequently money laundering.

The new version of Section 1960 converts the offense into a "general intent" crime. Under the new statute, it is an offense for anyone knowingly to conduct any "unlicensed money transmitting business," "whether or not the defendant knew that the operation was required to be licensed" or that operation without a license was a criminal offense. The statute can be violated in three ways: operating a money transmitting business without a required state license or conducting a money transmitting business that fails to comply with the provisions of Section 5330 (or the regulations that Treasury has promulgated in 31 C.F.R. Section 1022.380 which requires the business to register with FinCEN); or transporting or transferring funds that the defendant knows were derived from a criminal offense or were intended to be used to "promote of support unlawful activity"... . Thus, under the 3rd provision of Section 1960, a person operating a money transmitting business--which could be anything from a mom-and-pop money remitting business to Western Union to an informal

transfer system such as hawala--can be prosecuted for conducting transactions that the defendant knows involve illegal proceeds or funds that someone planned to use to commit an unlawful act. Moreover, as explained in the House Report, "It would not be necessary for the Government to show that the business was a storefront or other formal business open to walk-in trade. To the contrary, it would be sufficient to show that the defendant offered his services as a money transmitter to another."

It is already an offense under Sections 1956 and 1957, of course, for any person to conduct a financial transaction involving criminally derived property. But Section 1957 has a $10,000 threshold requirement, and Section 1956 requires proof of specific intent either to promote another offense or to conceal or disguise the criminal proceeds. New Section 1960 contains neither of these requirements if the property is criminal proceeds; or alternatively, if there is proof that the purpose of the financial transaction was to commit another offense, it does not require proof that the transmitted funds were tainted by any prior misconduct. Thus, in cases where the defendant is a money transmitting business, Section 1960 may prove more potent than either Section 1956 or 1957 as a prosecutor's tool. Finally, the changes to Section 1960 include an amendment to 18 USC Section 981(a)(1)(A) authorizing civil forfeiture of all property involved in a Section 1960 violation.

Note: Under general legal principles, the United States holds legal persons criminally responsible, as it does for individuals. The United States Code provides that the "the words 'person' and 'whoever' include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals" (1 USC Section 1). A corporation is held accountable for the unlawful acts of its officers, employees, and agents when the officers, employees, or agents act (i) within the scope of his/her duties, and (ii) for the benefit of the corporation. In both instances, these elements are interpreted broadly. Thus, a corporation is generally liable for the acts of its employees with the limited exception of acts that are truly outside the employee's assigned duties or which are contrary to the corporation's interests (e.g., where the corporation is the victim rather than the beneficiary of the employee's unlawful conduct). Whether the corporate management condoned or condemned the employee's conduct is irrelevant to the issue of corporate liability. The criminal responsibility of the legal person is engaged by the act of any corporate employee, not merely high-level executives. Participation, acquiescence, knowledge, or authorization by higher level employees or officers is relevant to the determination of the appropriate sanction. Additionally, under the applicable sentencing guidelines, the sanction could be mitigated if an "effective" compliance program had been in place. This principle recognizes that a corporation is liable for the acts of its employees although it cannot always control them. Thus, if a company has in place a compliance program that is effective and supported by management, and an employee still violates the law, the court can recognize the corporation's efforts as a mitigating factor in determining the level of the sanction.

- ***Art. 14(2) Implement feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders***.

As codified at 31 USC Section 5332(a), the new statute makes it an offense for any person, with the intent to evade a currency reporting requirement under Section 5316 (which requires that a Currency Monetary Instrument Report (CMIR) be filed when transporting greater than $10,000 in currency into or out of the United States), to conceal more than $10,000 in currency in any fashion, and to transport, or attempt to transport, such currency into or out of the United States. Section 5332(b) provides for criminal forfeiture of the property involved in the offense, including a personal money judgment if the directly forfeitable property cannot be found and the defendant does not have sufficient substitute assets to satisfy the forfeiture judgment. Section 5332(c) authorizes civil forfeiture for the same offense.

In anticipation of legal attacks suggesting that the new statute is nothing more than a re-codification of the existing penalties for violating the currency or money instrument report (CMIR) requirement and that forfeiture of 100 percent of the smuggled currency would still violate the Eighth Amendment, Congress included a set of "findings" emphasizing the seriousness of currency smuggling and the importance of authorizing confiscation of the smuggled money. In particular, the findings state that the intentional transportation of currency into or out of the United States "in a manner designed to circumvent the mandatory reporting [requirements] is the equivalent of, and creates the same harm as, smuggling goods." Moreover, the findings state that "only the confiscation of smuggled bulk cash can effectively break the cycle of criminal activity of which the laundering of bulk cash is a critical part."

- ***Art. 14(3) Implement appropriate and feasible measures to require financial institutions, including money remitters, to:***
  (a) include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;
  (b) maintain such information throughout the payment chain; and
  (c) apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

In addition to the two statutes criminalizing money laundering, the Bank Secrecy Act (BSA) provides additional powerful weapons for combating money laundering and the financing of terrorism. Depending on the specific statutory or regulatory requirement, the BSA and its implementing regulations apply generally to financial institutions. See

31 USC Section 5312(a)(2) and 31 C.F.R. Section 1010.100(t). The BSA and its implementing regulations require financial institutions and persons to file certain reports of financial transactions and create criminal offences for failure to file a report when required and/or for the filing of reports containing material misstatements or omissions of fact. These record keeping and reporting requirements include:

1. Requirement to report or record large cash transactions by financial institutions—Each banking institution, broker or dealer in securities, currency dealer or exchanger, transmitter of funds, issuer, seller or redeemer of traveler's checks or money orders other than the Postal Service, must file a Currency Transaction Report (CTR) for each deposit, withdrawal, exchange of currency or other payment or transfer by, through, or to a designated institution that involves more than $10,000 in currency. See 31 USC Section 5313(a) and 31 C.F.R. Section 1010.311. For purposes of this CTR requirement, multiple currency transactions are treated as a single transaction if they total more than $10,000 during any one business day.

2. Requirement for casinos to report large cash transactions—Each casino must file a report of each currency transaction, involving cash in or out, of more than $10,000. See 31 C.F.R. Section 1021.311. A currency transaction "involving cash" includes purchases and redemptions of chips and tokens, front money deposits and withdrawals, bets of currency, and payment on bets. As it is for non-casino financial institutions, multiple currency transactions are treated as a single transaction if the casino has knowledge that the transactions are by or on behalf of any person and result in either cash in or out totaling more than $10,000 during any gaming day.

3. Requirement for trades and businesses to report large cash transactions—Section 6050I of the Internal Revenue Code and 31 USC Section 5331 require that any person who, in the course of engaging in a trade or business, receives more than $10,000 in cash, cashier's check, bank draft, traveler's check or money order in a single transaction or two or more related transactions, file a Form 8300 (Reports Relating to Currency in Excess of $10,000 Received in a Trade or Business). See 26 USC Section 6050I, 31 USC Section 5331 and 31 C.F.R. Section 1010.330. The Form must include the name, address, and taxpayer identification number of the person from whom the cash was received; the amount of cash received; the date and nature of the transaction, and such other information as the Secretary of the Treasury may prescribe.

4. Requirement to report the cross-border transportation of large amounts of currency or monetary instruments—Each person must make a currency or money instrument report (CMIR) when he or she physically transports currency or other monetary instruments (including bearer negotiable instruments, securities and traveler's checks) in an aggregate exceeding $10,000 (or its foreign equivalency) at one time, into or out of the United States. See C.F.R. Section 1010.340(a) and 31 USC Sections 5316(a) and 5317. In addition, subsection 1010.340(b) states that each person in the United States who receives currency or other monetary instruments from a place outside the United States, must report the amount, the date of receipt, the form of monetary instruments, and the person from whom the currency or monetary instruments were received. Subsection 1010.340(c) further states that the CMIR requirement does not apply to certain entities, including the Federal Reserve or a bank or broker or dealer in securities with respect to currency or other monetary instruments mailed or shipped through the Postal Service or by common carrier.

Any attempt to structure transactions in an effort to avoid the above described reporting transactions has been criminalized at 31 USC Section 5324.

Additionally, Bank Secrecy Act (BSA) rule [31 C.F.R. 1010.410(f))] requires all financial institutions, when executing a transmittal order, to
maintain records that indicate the name and address of the originator, the amount of the transmittal, the date of the transmittal execution, the name of the recipient ant the name of the recipient financial institution. If the financial institution is an intermediary in the transmittal process, the financial institution must also maintain records which indicate the originator's and beneficiary's name and the financial institutions involved.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

The Department of Justice has proposed a comprehensive money laundering and forfeiture legislative proposal designed to address gaps in our current legal authority that collectively hamper the government's ability to exercise the full weight of money laundering and forfeiture law. Among other money laundering provisions, the proposed amendments would include a broader range of foreign corruption offenses within our money laundering predicates.

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

The Department of Justice regularly provides training to federal prosecutors and federal, state, and local law enforcement on financial investigations, money laundering laws and methods, and the seizure and forfeiture of assets.

In addition, the Department of Justice's Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) provides justice sector reform assistance in the Asia-Pacific region on the development of anti-money laundering and counter-terrorism strategies.

II. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO APEC INEGRITY STANDARDS (CROSS CHECK WITH I.A. ABOVE)

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LEADERS' AND MINISTERS' COMMITMENTS

See below.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Santiago Commitment/COA: Strengthen Measures to Effectively Prevent and Fight Corruption and Ensure Transparency by Recommending and Assisting Member Economies to:

- ***Establish objective and transparent criteria that assure openness for merit, equity, efficiency for the recruitment of civil servants, and promote the highest levels of competence and integrity;***

See response above (I.A.).

- ***Adopt all necessary measures to enhance the transparency of public administration, particularly with regard to organization, functioning and decision-making processes;***

See response above (I.A.).

- ***Develop and implement appropriate public financial disclosure mechanisms or codes of conduct for senior-level public officials [SOM III: Guidelines];***

See response above (I.A.).

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

See response above (I.A.).

III. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO SAFE HAVENS (CROSS CHECK WITH I.C. ABOVE):

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LEADERS' AND MINISTERS' COMMITMENTS

See below.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Santiago Commitment/COA: Deny safe haven to officials and individuals guilty of public corruption, those who corrupt them, and their assets:

- ***Promote cooperation among financial intelligence units of APEC members including, where appropriate, through existing institutional mechanisms.***

The United States provides significant financial support to both the Financial Action Task Force and the Asia-Pacific Group on Money Laundering, the FATF-Style Regional Body for the Asia-Pacific region. The United States is also a key partner of the Egmont Group, and the U.S. financial intelligence unit (FIU), FinCEN works very closely with it. The United States also supports global training efforts by the UN Office on Drugs and Crime and other international organizations to raise the capabilities of the region's FIUs.

- ***Encourage each economy to promulgate rules to deny entry and safe haven, when appropriate, to Officials and individuals guilty of public corruption, those who corrupt them, and their assets.***

As part of the United States' "No Safe Haven" policy, the U.S. has the legal authority to deny or revoke the visas of certain individuals involved in public corruption that has or has had serious effects on specified United States interests. Specifically, on January 12, 2004, President Bush signed Presidential Proclamation 7750 (PP 7750), under Section 212(f) of the Immigration and Nationality Act (INA), suspending the entry into the United States, as immigrants or non-immigrants, of certain corrupt public officials, their private sector enablers, and dependents of either category who are beneficiaries of any articles of monetary value or other benefits obtained by such individuals. PP 7750 has been used regularly as a tool to deny or revoke visas in a large number of cases involving former and current high level public officials as well as private sector enablers.

- ***Implement, as appropriate, the revised Financial Action Task Force (FATF) 40 Recommendations and FATF's Special Recommendations (Santiago Course of Action)***

The U.S.' measures to criminalize money laundering have been assessed by the Financial Action Task Force (FATF), the international standard setting body for Money Laundering and Terrorist Financing, to determine the level of compliance of the U.S. anti-money laundering and counter-terrorist financing (AML/CFT) regime with the FATF 40+9 Recommendations. That assessment resulted in adoption of the Third Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism -United States of America (US MER) in June 2006. The U.S. received positive ratings for substantial compliance with most of the FATF standards. Strong U.S. commitment and aggressive action to identify, disrupt and dismantle money laundering and terrorist financing networks within our borders and abroad was specifically noted and reflected in the results of the FATF assessment. Of the 49 FATF Recommendations, the U.S. was found to be largely compliant (LC) or fully compliant (C) with 43 of the Recommendations. The U.S. MER notes that U.S. AML/CFT efforts "have produced impressive results in terms of prosecutions, convictions, seizures, asset freezing, confiscation and regulatory enforcement actions. A copy of the U.S. evaluation report can be found at: http://www.fatf-gafi.org/dataoecd/44/9/37101772.pdf. In addition, the

U.S.'s anti-money laundering system has been evaluated by the International Monetary Fund in 2010 as part of the Article IV review.

- ***Work cooperatively to investigate and prosecute corruption offenses and to trace, freeze, and recover the proceeds of corruption (Santiago Course of Action)***

In order to implement this initiative, the Department of Justice's Asset Forfeiture and Money Laundering Section (AFMLS) formed a Kleptocracy Team. Comprised of a dedicated group of prosecutors, the Kleptocracy Team works with experienced financial investigators from the Federal Bureau of Investigation and the Department of Homeland Security, other components of the Criminal Division of the Department of Justice, including the Office of International Affairs, and collaborates with foreign authorities and partners around the world.

The Kleptocracy Team's mission has three main components: (1) Identifying proceeds of kleptocracy; (2) Freezing, seizing, and forfeiting those assets; and, (3) Disposing of the forfeited assets for the benefit of the people of the jurisdiction harmed by corruption. In the last decade, the Department of Justice has forfeited over $185 million in corruption proceeds and has seized or frozen upwards of $450 million from corrupt leaders and their cronies around the world. The team can be reached at kleptocracy@usdoj.gov.

In May 2012, the United States published a guide on its asset recovery laws and procedures, translated into all six UN languages.

- ***Implement relevant provisions of UNCAC. These include:***

  - ***Art. 14 (Money laundering)***

See response to I.C. above.

  - ***Art. 23 Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally: (a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;***

The United States criminalized money laundering on October 27, 1986. These statutes are found at Title 18, U.S. Code, Sections 1956 and 1957. See, Money Laundering Control Act of 1986, Pub. L. 99-570. Section 1956 consists of three provisions dealing with domestic money laundering, international money laundering, and undercover "sting" cases, respectively. See 18 USC Sections 1956(a)(1), (a)(2), and (a)(3). Section 1956 is punishable by a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than 20 years, or both. Section 1957 makes it an offense simply to conduct any monetary transaction in criminal proceeds involving more than $10,000. Section 1957 is punishable by a fine and/or imprisonment for not more than 10 years.

  - ***Art. 31(1)(a) Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of: (a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds and (b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.***

The U.S. has parallel civil (in rem) and criminal (in personam) forfeiture systems, which provide for the forfeiture of both the instrumentalities and proceeds of crime. Bribery and corruption offenses are listed as "specified unlawful activities" in Title 18, United States Code (USC) Section 1956(c)(7) and Title 18, USC, Section 1961(1), and the proceeds of these offenses may be forfeited civilly under Title 18, USC Section 981(a)(1)(C). Moreover, Title 28, USC Section 2461(c) authorizes criminal forfeiture for any offense for which there is civil forfeiture authority. Corruption crimes constitute both domestic and foreign predicates for money laundering under U.S. law, and property involved in a money laundering offense includes proceeds and facilitating property.

Title 18, USC, Sections 981(a)(1)(A) and 982(a)(1) make all "property involved in" money laundering violations, such as Title 18, USC, Sections 1956 and 1957 subject to civil and criminal forfeiture, respectively. Thus, the proceeds of corruption offenses are both criminally and civilly forfeitable either as property involved in money laundering, if a money laundering offense is the predicate for forfeiture, and through 981 or 2461. Proceeds
under U.S. law are considered to be the direct proceeds generated by the criminal offense, as well as any indirect proceeds, meaning any property into which the direct proceeds were converted. Section 2461(c) also explicitly incorporates the Federal Rules of Criminal Procedure. Rule 32.2 of the Federal Rules of Criminal Procedure allows for a criminal forfeiture judgment in the form of a money judgment for the amount of proceeds, which may be executed against any property of the defendant. Also, if specific property is forfeited in a criminal forfeiture order and it is no longer available, other assets of the defendant can be forfeited as substitute property under

Title 18, USC, Section 982(b) and Title 21, USC, Section 853(p). The United States can confiscate such property, equipment or other instrumentalities in the context of money laundering cases that are based on the predicate offenses of bribery or corruption.

- ***Art. 31(2) Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.***

As part of a financial investigation, federal law enforcement agencies are empowered to identify and trace property that is subject to forfeiture under the relevant statutes. Those powers include the use of Grand Jury subpoenas and/or administrative subpoenas, as well as search warrants.
Property subject to forfeiture can be seized, restrained, or otherwise preserved prior to trial in order to ensure that it remains available, provided that there is probable cause to believe that the property is subject to confiscation. The court in a criminal case is permitted to issue both pre-indictment and post-indictment restraining orders under 21 USC Section 853(e). The property can also be seized with a criminal seizure warrant (Section 853(f)) which requires a showing that a restraining order would not be adequate to preserve the property. Similarly, federal courts have broad authority in forfeiture proceedings in rem to "take any…action to seize, secure, maintain, or preserve the availability of property subject to…forfeiture," pursuant to 18 USC Section 983(j), as well as authority to issue a seizure warrant pursuant to 18 USC Section 981(b).

- ***Art. 31(3) Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.***

The United States has two funds and fund administrative offices for seized and confiscated property. The Department of Justice's Assets Forfeiture fund is governed by Title 28, USC, Section 524(c). The Department of the Treasury's Forfeiture Fund is governed by Title 31, USC, Section 9703.

- ***Art. 40 Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.***

U.S. law generally does not require the denial of mutual legal assistance on the ground of bank secrecy. When seeking court orders on behalf of foreign states that seek mutual legal assistance, the United States has taken the position before its courts that assistance may not be declined as a result of privacy provisions of U.S. banking law. Moreover, it is the policy of the United States that where a domestic law provides for executive discretion in denying assistance, the executive branch does not decline assistance on that basis. Pursuant to the Right to Financial Privacy Act (12 USC Chapter 35), the Government may obtain access to the financial records of any customer from a financial institution by obtaining an administrative subpoena, a search warrant, a judicial subpoena or by making a formal request (12 USC Section 3402). Search warrants must be obtained pursuant to the Federal Rules of Criminal Procedure (12 USC Section 3406). In the other cases the customer may challenge a request for financial information before a court, and the court may deny access to the financial records where "there is not a demonstrable reason to believe that the law enforcement inquiry is legitimate and a reasonable belief that the records sought are relevant to that inquiry" (12 USC Section 3410).

- ***Chapter V (Asset Recovery)***

  - ***Art. 55(1)(a) A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system: (a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it;***

The United States has the ability to enforce foreign restraining orders and forfeiture judgments pursuant to a MLA request or pursuant to requests made under certain multilateral conventions, including the 1988 Vienna Convention, the UN Convention against Corruption (UNCAC), and the UN Convention against Transnational Organized Crime (UNTOC). The crime for which the property is to be restrained and ultimately forfeited must be one that would subject the property to forfeiture under U.S. law, had the underlying acts been committed in the United States.

The United States may file an application with a United States District Court for the issuance of a United States restraining order pursuant to 28 USC Section 2467 upon receipt of an affidavit with knowledge of the underlying investigation or case for which seizure is requested if a foreign court of competent jurisdiction has not yet issued a restraining order. In situations where the United States initiates a domestic, non-conviction based forfeiture proceeding, it can also restrain assets, as described below using 18 USC Section 981 or 18 USC Section 983.

18 USC Section 981(b)(4) provides for the entry of a 30-day (renewable) restraint based on evidence of an arrest or charge in a foreign jurisdiction, while the United States is awaiting evidence from the foreign jurisdiction. 18 USC Section 983(j) provides for a renewable 90-day restraint upon the filing of a non-conviction based forfeiture complaint and in some cases before the filing of such a complaint if certain criteria are met. Both referenced provisions may be used to recover property in a non-conviction based U.S. forfeiture proceeding.

18 USC Section 981 and 21 USC Section 853 provide a basis on which the United States can initiate a domestic forfeiture of property involved in or the proceeds of certain foreign offenses. The United States can forfeit property or proceeds involved in the commission of offenses such as drug trafficking, murder, kidnapping, robbery, extortion, destruction of property, fraud, bribery of a public official, or misappropriation, theft, or embezzlement of public funds by a public official.

All requests for incoming mutual legal assistance are executed pursuant to the terms of the applicable treaty and U.S. domestic law. A wide variety of assistance in support of foreign criminal cases, including for example, bank and business records, can be obtained by U.S. prosecutors pursuant to 18 USC Section 3505 and 28 USC Section 1782. Requests seeking seizure and forfeiture of criminal proceeds are executed in conformity with additional U.S. laws.

> • ***Art. 56 Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.***

The United States is a partner of the Stolen Asset Recovery Initiative (StAR). The United States is also a member of the Camden Asset Recovery Inter-Agency Network (CARIN) and has supported the development of regional equivalents to CARIN, as well as the Asset Recovery Focal Point Initiative supported by INTERPOL and StAR.

> • ***Art. 57 Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.***

The United States may dispose of or return forfeited assets in two ways. The first is a statutory power to "share" forfeited assets with a foreign government that participated directly or indirectly in the investigation leading to forfeiture. There must be an agreement between the governments in order to "share" forfeited assets with the other nation. Only the Attorney General or the Secretary of the Treasury, or their designees, may approve an asset transfer, and the Department of State must concur. The U.S. Congress has the authority to object to an asset transfer in limited circumstances. Second, the Attorney General has the regulatory authority to "remit" confiscated assets to victims of the underlying criminal activity (i.e. the criminal activity upon which confiscation was based), including foreign corruption offenses.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

The Department of Justice has proposed a comprehensive money laundering and forfeiture legislative proposal designed to address gaps in our current legal authority that collectively hamper the government's ability to exercise the full weight of money laundering and forfeiture law. Among other money laundering provisions, the proposed amendments would include a broader range of foreign corruption offenses within our money laundering predicates.

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

The Department of Justice regularly provides training to federal prosecutors and federal, state, and local law enforcement on financial investigations, money laundering laws and methods, and the seizure and forfeiture of assets. The United States supports a wide range of anticorruption technical assistance activities, including the provision of financial support and expertise to regional asset recovery workshops and the placement of asset recovery mentors in pilot countries. U.S. expertise has contributed to expert meetings and to best practices guides for practitioners.

IV. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO PRIVATE SECTOR CORRUPTION:

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LEADERS' AND MINISTERS' COMMITMENTS

See below.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Santiago Commitment/COA: Fight both Public and Private Sector Corruption:

- ***Develop effective actions to fight all forms of bribery, taking into account the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or other relevant anticorruption conventions or initiatives.***

The United States' FCPA enforcement statistics can be found here: http://www.justice.gov/criminal/fraud/fcpa/docs/response3-appx-b.pdf. Also, see responses to section I.

- ***Adopt and encourage measures to prevent corruption by improving accounting, inspecting, and auditing standards in both the public and private sectors in accordance with provisions of the UNCAC.***

Accounting. U.S. public companies have been required to maintain accurate books and records and sufficient systems of internal accounting control since the passage of the FCPA. The FCPA requires public companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance that all transactions take place in accordance with management's authorization and are recorded in a manner that permits the preparation of financial statements in conformity with generally accepted accounting principles (GAAP).

U.S. GAAP, issued primarily by the Financial Accounting Standards Board (FASB), under the oversight of the Securities and Exchange Commission (SEC), comprise a comprehensive body of accounting standards. U.S. GAAP requires an accounting of all assets, liabilities, revenue and expenses. U.S. GAAP also requires extensive disclosures concerning the operations and financial condition of companies.

Although private companies are not covered by the books and records and internal control provisions of the FCPA and do not fall within the SEC's jurisdiction, such companies generally are required by federal and state tax laws and state corporation laws to maintain accurate books and records sufficient to properly calculate taxes owed. Further, in order to comply with financial institutions' lending requirements, many larger private companies maintain their books and records to facilitate the preparation of financial statements in conformity with GAAP.

Internal Control. As directed by Section 404 of the Sarbanes-Oxley Act of 2002 ("SOX"), the SEC adopted rules in 2003 to require all Exchange Act reporting companies other than registered investment companies, regardless of their size, to include in their annual reports a report of management, and an accompanying auditor's report, on the effectiveness of the company's internal control over financial reporting.[1] The rules requiring internal control over financial reporting reports took effect in 2004 for those issuers that met the definition of large accelerated filer or accelerated filer, and for non-accelerated filers, the rules took effect in 2007. All issuers are

1 – The term internal control over financial reporting is defined as a process designed by, or under the supervision of, the issuer's principal executive and principal financial officers, or persons performing similar functions, and effected by the issuer's board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:
(1) Pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the issuer;
(2) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the issuer are being made only in accordance with authorizations of management and directors of the issuer; and
(3) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the issuer's assets that could have a material effect on the financial statements.

subject to the requirements of Section 404(a) of SOX, which requires that an issuer's annual report include a report of management on the issuer's internal control over financial reporting. Pursuant to amendments under the Dodd-Frank Act of 2010, smaller issuers are not required to include an auditor's attestation on management's report on internal control over financial reporting in their filings with the SEC.

The SEC also issued interpretive guidance for management in 2007 regarding its evaluation and assessment of internal control over financial reporting. The guidance sets forth an approach by which management can conduct a top-down risk-based evaluation of internal controls. This guidance includes direction for management in identifying financial reporting risks and controls and evaluating evidence of the operating effectiveness of internal control over financial reporting. Further, the guidance contains information to assist management in developing disclosures about their internal control over financial reporting, including disclosures about material weaknesses that may be identified.

Audit. An auditor's report must accompany the annual financial statements submitted by a public company with the SEC. Section 10A of the Exchange Act ("Section 10A") requires audits of issuers to include procedures designed to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the determination of financial statement amounts. U.S. auditing standard AU section 317, Illegal Acts by Clients ("AU section 317") establishes requirements and responsibilities for auditors regarding illegal acts, and is found in the auditing standards prescribed both by the Public Company Accounting Oversight Board ("PCAOB") for audits of issuers and by the American Institute of Certified Public Accountant's Auditing Standards Board for audits of non-issuers. These standards establish requirements for auditors that are consistent with the requirements in Section 10A. In addition, AU section 110, Responsibilities and Functions of the Independent Auditor, requires the auditor to plan and perform an audit to obtain reasonable assurance about whether the financial statements being audited are free of material misstatement, whether caused by error or fraud, and AU section 316, Consideration of Fraud in a Financial Statement Audit, establishes standards and provides guidance to auditors in fulfilling that responsibility, as it relates to fraud.

- ***Support the recommendations of the APEC Business Advisory Council (ABAC) to operate their business affairs with the highest level of integrity and to implement effective anticorruption measures in their businesses, wherever they operate.***
    - Both the Department of Commerce and Department of State provide FCPA and related anticorruption training to U.S. and Foreign Commercial Service officers and State Department Foreign Service officers so that they may raise awareness about corruption and compliance programs and assist U.S. exporters as appropriate when confronted with corruption issues overseas.
    - Commerce and State Department officials and foreign service personnel provide general information concerning the basic provisions of the FCPA, other countries' anti-bribery laws, and international anti-corruption instruments such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention), the Inter-American Convention against Corruption (or OAS Convention), and the UNCAC.
    - Commerce officials also participate in numerous seminars and conferences on corruption, the FCPA, and related corporate compliance issues sponsored by professional associations and industry groups, many of which are attended by outside and in-house counsel representing small and medium-sized enterprises (SMEs).
    - The Department of Commerce provides information to companies through a number of U.S. and international publications designed to assist firms in complying with anti-corruption laws. For example, particularly helpful for SMEs is the recently issued OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance, developed and agreed upon by the United States and other countries which are parties to the OECD Anti-Bribery Convention. The OECD Good Practice Guidance sets forth non-legally binding good practices for companies to consider (among others) for ensuring effective internal controls, ethics, and compliance programs or measures for preventing and detecting foreign bribery. For the complete OECD Good Practice Guidance text, see: http://www.oecd.org/dataoecd/5/51/44884389.pdf.
    - The Department of Commerce has produced a practical guide for businesses involved in international trade, entitled Business Ethics: A Manual for Managing a Responsible Business Enterprise in Emerging Market Economies, available on-line at www.ita.doc.gov/goodgovernance.
    - The Department of Commerce has included a new anticorruption section in U.S. Foreign Commerce Service Country Commercial Guides, http://export.gov/about/eg_main_016806.asp, including U.S. Foreign Corrupt Practices Act information from the Layperson's Guide and the OECD Good Practice Guidance.
    - The Department of Commerce has led efforts within the APEC Working Group on Small and Medium-sized Enterprises in establishing voluntary sets of principles for harmonized codes of business ethics for the medical device sector, the biopharmaceutical sector, and the construction and engineering sector. Commerce has also facilitated the private sector establishment of voluntary national industry codes of ethics based upon the voluntary principles in APEC economies where SMEs are the major stakeholders in these sectors.
    - The Department of Commerce also holds train-the-trainer workshops to build ethics compliance capacity in small and medium-sized firms in foreign markets.
    - The Department of Commerce has a bribery complaint email form that is accessible from the Commerce website, found at http://tcc.export.gov/Report_a_

Barrier/index.asp, through which U.S. companies can report allegations of bribery of foreign public officials in international business transactions. The Department of Justice also has an e-mail address specifically for FCPA allegations, found at FCPA.Fraud@usdoj.gov.

- For more links to compliance guidance and other initiatives, see: http://www.commerce.gov/os/ogc/transparency-and-anti-bribery-initiatives.

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

The Department of Justice regularly provides training to federal prosecutors at the National Advocacy Center in order to ensure proper enforcement of criminal laws related to public corruption, including 18 USC Section 201 and related statutes. In addition, the Department of Justice, in coordination with the Securities and Exchange Commission and the Federal Bureau of Investigation provides annual training to prosecutors, enforcement attorneys and law enforcement agents about how to effectively investigate and prosecute violations of transnational bribery (the FCPA), including sessions focused on commercial bribery in violation of the Travel Act.

V. ENHANCING REGIONAL COOPERATION

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LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Strengthen Cooperation Among APEC Member Economies to Combat Corruption and Ensure Transparency in the Region:

See below.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

- ***Promote regional cooperation on extradition, mutual legal assistance and the recovery and return of proceeds of corruption.***

The United States continues to be committed to promoting international cooperation in the APEC region and throughout the world. The United States, along with most other APEC economies, is a party to numerous multilateral conventions which contain extradition, mutual legal assistance and asset recovery provisions, including the UNCAC, UNTOC, and Inter-American Convention on Mutual Assistance in Criminal Matters. In addition, the United States currently has bilateral mutual legal assistance treaties or mutual legal assistance agreements with the following APEC economies: Australia, Canada, People's Republic of China, Hong Kong, Japan, Republic of Korea, Malaysia, Mexico, the Philippines, Russia, Taiwan, and Thailand.

The United States currently has bilateral extradition treaties with the following APEC economies: Australia, Canada, Chile, Hong Kong, Japan, Republic of Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, the Philippines, Singapore, and Thailand. Of these countries which have older "list treaties" with the United States, the UNCAC expands the number of offenses for which the United States can extradite fugitives to these countries.

There have been numerous extradition requests to the United States involving corruption, fraud, or other white collar offenses where the fugitives have been arrested and extradited from the United States. Additionally, the United States has provided a great deal of mutual legal assistance to many countries in the APEC region and around the world for these types of offenses.

Asset forfeiture and the recovery and return of proceeds of corruption are also priorities of the United States. U.S. law allows for the freezing and forfeiture of assets which are the proceeds of corruption related offenses. As noted above, the U.S. has a variety of tools available to facilitate the identification and investigation, restraint, and confiscation of assets.

- ***Afford one another the widest measure of mutual legal assistance, in investigations, prosecutions and judicial proceedings related to corruption and other offences covered by the UNCAC.***

The United States is able to provide a great deal of legal assistance, for matters relating to corruption and other offenses covered by the UNCAC under its very broad legal assistance statutes, namely 18 USC Section 3512 and 28 USC Section 1782.

Requests can be made pursuant to a bilateral mutual legal assistance treaty (MLAT), a multilateral convention, such as the UNCAC or discretionary letter rogatory or letter of request. Some of the types of assistance that can be provided include: obtaining compelled or sworn testimony, producing financial or third party records, authenticating records, executing search and seizure warrants, and freezing and seizing assets. Additionally, informal legal assistance, where appropriate is encouraged through the law enforcement channel.

- ***Designate appropriate authorities in each economy, with comparable powers on fighting corruption, to include cooperation among judicial and law enforcement agencies and seek to establish a functioning regional network of such authorities.***

The Office of International Affairs of the Criminal Division of the U.S. Department of Justice is the central authority for all formal mutual legal assistance and extradition matters for all types of offenses, including corruption related offenses. The Public Integrity Section of the Criminal Division of the U.S. Department of Justice, along with the 94 United States Attorneys' Offices prosecute corruption cases brought in U.S. federal courts. The Fraud Section of the Criminal Division of the U.S. Department of Justice, in cooperation with the United States Attorney Offices, prosecutes violations of the Foreign Corrupt Practices Act. The Asset Forfeiture and Money Laundering Section of the Criminal Division of the U.S Department of Justice prosecutes money laundering cases along with the 94 United States Attorney's Offices, who also prosecute violations of U.S. money laundering laws as well as pursuing civil and criminal forfeiture cases against the proceeds of corruption and money laundering. The Federal Bureau of Investigation (FBI), along with other U.S. law enforcement agencies, investigates allegations of corruption. There are numerous law enforcement attachés located in U.S. Embassies throughout the world, including in the APEC region.

- ***Sign bilateral and multilateral agreements that will provide for assistance and cooperation in areas covered by the UNCAC. (Santiago Course of Action) These include:***
  - ***Art. 44 – Extradition***
  - ***Art. 46 – Mutual Legal Assistance***
  - ***Art. 48 – Law Enforcement Cooperation***
  - ***Art. 54 -- Mechanisms for recovery of property through international cooperation in confiscation***
  - ***Art. 55 – International Cooperation for Purposes of Confiscation***

As noted, the United States is already a party to numerous bilateral and multilateral agreements on these topics and believes that these agreements, including the UNCAC, can be effectively utilized to provide for assistance and cooperation.

- ***Work together and intensify actions to fight corruption and ensure transparency in APEC, especially by means of cooperation and the exchange of information, to promote implementation strategies for existing anticorruption and transparency commitments adopted by our governments, and to coordinate work across all relevant groups within APEC (e.g., SOM, ABAC, CTI, IPEG, LSIF, and SMEWG).***

During its chairmanship in 2011, the United States spearheaded the ACT and ABAC's co-sponsorship of the ABAC-ACT Dialogue and Partnership on Combating Corruption and Bribery: Ensuring Greater Integrity in APEC Economies, Markets, and Supply Chains, bringing together representatives from the private sector, civil society, and government to exchange thoughts and experiences about how to collectively combat corruption and bribery. The United States also led the ACT's efforts to work with IPEG and LSIF to address corruption and illicit trade with respect to counterfeit (falsified) medicines, jointly sponsoring the APEC Dialogue on Corruption and Illicit Trade: Combating Counterfeit (Falsified) Medicines and Strengthening Supply Chain Integrity.

- ***Coordinate, where appropriate, with other anticorruption and transparency initiatives including the UNCAC, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, FATF, the ADB/OECD Anticorruption Action Plan for the Asia Pacific region, and Inter-American Convention Against Corruption.***

The United States is a member of FATF, the G8, and the G20, and a party to the UNCAC, the OECD Anti-Bribery Convention, and the Inter-American Convention against Corruption. The United States collaborates with the ADB/OECD Anticorruption Action Plan for the Asia Pacific Region and has provided support to the International Anti-Corruption Academy and the Stolen Asset Recovery Initiative. The United States promotes coordination and synergies among these initiatives. Under the U.S. chairmanship of the ACT, participation and reporting by representatives of many of these initiatives was encouraged.

- ***Recommend closer APEC cooperation, where appropriate, with the OECD including a joint APEC-OECD seminar on anticorruption, and similarly to explore joint partnerships, seminars, and workshops with the UN, ADB, OAS, the World Bank, ASEAN, and The World Bank, and other appropriate multilateral intergovernmental organizations.***

The United States supported the APEC ACT-OECD workshop on "Fighting Foreign Bribery in APEC Economies." See also immediately above. In addition, the United States funds a regional anticorruption advisor in the Asia Pacific, in partnership with the American Bar Association, to assist countries in acting upon APEC anticorruption commitments and to support collaboration among these entities.

VI. OTHER APEC ACT LEADERS' AND MINISTERS' COMMITMENTS

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LEADERS' AND MINISTERS' COMMITMENTS

See below.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

• **2005**: Ministers encouraged all APEC member economies **to take all appropriate steps towards effective ratification and implementation, where appropriate, of the United Nations Convention against Corruption (UNCAC)**. Ministers encouraged relevant APEC member economies to make the UNCAC a major priority. They urged all member economies to submit brief annual progress reports to the ACT Task Force on their APEC anti-corruption commitments, including a more concrete roadmap for accelerating the implementation and tracking progress. (See Section I Above, UNCAC)

The United States ratified the UNCAC on October 30, 2006, and was reviewed under the UNCAC Review Mechanism in the first year of review (2010-2011). The United States welcomed a country visit to supplement the desk review and has published its self-assessment: http://www.unodc.org/documents/treaties/UNCAC/SA-Report/Self-Assessment_Report_-_UNCAC_-_USA.zip.

• **2006:** Ministers underscored their commitment **to prosecute acts of corruption, especially high-level corruption by holders of public office and those who corrupt them.** In this regard, Ministers commended the results of the Workshop on Denial of Safe Haven: Asset Recovery and Extradition held in Shanghai in April 2006. Ministers agreed to consider developing domestic actions, in accordance with member economy's legislation, to deny safe haven to corrupt individuals and those who corrupt them and prevent them from gaining access to the fruits of their corrupt activities in the financial systems, including by implementing effective controls to deny access by corrupt officials to the international financial systems.
In August 2006, the United States set forth a framework to deter, prevent, and address high-level, public corruption in a National Strategy to Internationalize Efforts against Kleptocracy. This strategy identified critical tools to detect and prosecute corrupt officials around the world.

• **2007:** We endorsed a model **Code of Conduct for Business, a model Code of Conduct Principles for Public Officials and complementary Anti-Corruption Principles for the Private and Public Sectors**. We encouraged all economies to implement these codes and welcomed agreement by Australia, Chile and Viet Nam to pilot the Code of Conduct for Business in their small and medium enterprise (SME) sectors. (AELM, AMM)

• **2008:** We commended efforts undertaken by member economies to develop comprehensive anti-corruption strategies including efforts to restore public trust, ensure government and market integrity. We are also committed **to dismantle transnational illicit networks and protect our economies against abuse of our financial system by corrupt individuals and organized criminal groups through financial intelligence and law enforcement cooperation related to corrupt payments and illicit financial flows**. We agreed to further strengthen international cooperation to combat corruption and money laundering in accordance with the Financial Action Task Force standards. International legal cooperation is essential in the prevention, investigation, prosecution and punishment of serious corruption and financial crimes as well as the recovery and return of proceeds of corruption. (AELM, AMM)

• **2009:** We welcome the Anti-Corruption and Transparency Experts' Task Force's Singapore Declaration on Combating Corruption, Strengthening Governance and Enhancing Institutional Integrity, as well as the APEC Guidelines on Enhancing Governance and Anti-Corruption. We encourage economies to implement measures to give practical effect to the Declaration and Guidelines. (AMM)

• **2010:** We agreed to leverage collective action **to combat corruption and illicit** trade by promoting clean government, fostering market integrit1y, and strengthening relevant judicial and law enforcement systems. We agreed to deepen our cooperation, especially in regard to discussions on achieving more durable and balanced global growth, increasing capacity building activities in key areas such as combating corruption and bribery, denying safe haven to corrupt officials, strengthening asset recovery efforts, and enhancing transparency in both public and private sectors. We encourage member economies, where applicable, **to ratify the UN Convention against Corruption and UN Convention against Transnational Organized Crime and to take measures to implement their provisions, in accordance with economies legal frameworks to dismantle corrupt and illicit networks across the Asia Pacific region.** (AELM, AMM)

The United States ratified the UNTOC on November 3, 2003.

ECONOMY: VIETNAM
CALENDAR YEAR: 2012
LAST UPDATED: May, 2012

LEADERS' AND MINISTERS' COMMITMENTS

- **2010**: We agreed to enhance our efforts to improve transparency and eliminate corruption, including through regular reporting via ACT and other relevant fora on economies' progress in meeting APEC Leaders' commitments on anti-corruption and transparency.
- **2006:** Ministers endorsed APEC 2006 key deliverables on Prosecuting Corruption, Strengthening Governance and Promoting Market Integrity and encouraged member economies to take actions to realize their commitments. Ministers also encouraged all economies to complete their progress reports on the implementation of ACT commitments by 2007. Ministers welcomed APEC efforts to conduct a stocktaking exercise of bilateral and regional arrangements on anti-corruption in cooperation with relevant international and regional organizations, and encouraged member economies to fully participate in the stocktaking activities.

Objective: Where appropriate, to self-assess progress against APEC Leaders' and Ministers' commitments on anti-corruption, transparency, and integrity and to identify capacity building needs to assist the ACT to identify priority areas for future cooperation.

EXECUTIVE SUMMARY

1. Summary of main achievements/progress in implementing the commitments of APEC Leaders and Ministers on anti-corruption, transparency, and integrity since 2004.

Vietnam has participated in all ACT meetings and related seminars and workshops. At each ACT meeting, Vietnam makes report on its progresses in anti-corruption and transparency, refleting the serious implementationof APEC leaders and ministers' commitments on anti-corruption and transparency. The main achievements/progresses since 2004 are as follows:

- Ratification and implementation of UNCAC: on June 30, 2009, the State President of Vietnam signed the Decision of ratifying the Convention with reservation to Article 66, paragraph 2 on procedures to settle disputes relating to understanding or applying the Convention. In the Decision, is is also stated that Vietnam shall not be binded by the Convention's provisions on criminalization of acts of illegal enrichment (Article 20) and criminal liability of legal entities (Article 26), shall not apply directly the Convention's provisions and the implementation of the Convention's provisions will be based on Vietnam's constitutional principles and laws, signed bilateral and multilateral agreements with other countries and on the principle of reciprocity; and shall not consider the Convention the direct legal basis for extradition, the extradition shall be excercised following Vietnam's regulated laws, extradition agreements and the principle of reciprocity. The Convention entered into force in Vietnam from September 18, 2009.

In order to implement the Convention, on April 7, 2010, the Government of Vietnam adopted its Plan of UNCAC Implementation which stated clearly the groups of tasks to be carried out, timeframes and responsibility of concerned agencies. The main tasks include internalisation of the Convention's provisions, improvement of the national legal frameworks, effective implementation of laws and regulations on anti-corruption, education and dissemination in order to raise awareness on anti-corruption, enhancement of international cooperation on anti-corruption. The implementation is divided into 3 stages: Stage 1 (2010-2011) targeted at organizing the implementation of the Convention, designating respsonsibilites to implement the contents of the Convention, guiding on improving legal provisions on anti-corruption in accordance with the Convention; Stage 2 (2011 – 2016) aimed at assessing the initial results of each solution to implement the Convention and the improvement of legal frameworks on anti-corruption in order to adopt new solutions and measures and improve the organizational structure and operations of agencies specialized on anti-corruption; Stage 3 (2016-2020) targeted at comprehensively assessing the implementation of the Convention, therefrom further improving the legal frameworks and institutions to enhance the quality and effectiveness of the anti-corruption works.

The Plan also clearly defines agencies and ministries' responsibilities in implementing the Convention, notably (1) the Government Inspectorate shall be the national focal point agency for exchanging information on anti-corruption and the agency taking the main charge of consulting the Government on the implementation of the Convention; (ii) the Ministry of Justice shall be the national focal point agency for receiving, transferring, monitoring and speeding-up the implementation of the judicial power delegation in civil matters and asset recovery; (iii) the Ministry of Public Security shall be the national focal point agency for receiving, transferring, handling the MLA requests on extradition and transfer of persons serving imprisonment sentence; and (iv) the Supreme People's Procuracy shall be the national focal point agency for receiving, transferring, monitoring and speeding-up the implementation of the judicial power delegation in criminal matters.

The Convention implementation plan has been seriously implemented by the Government and all concerned agencies and administrative leves and as a result, the le-

gal frameworks and policies on anti-corruption have been step by step improved and effectively implemented, corrupt acts discovered through inspections, examinations and investigations have been prosecuted and strictly convicted, effective practices in anti-corruption have been created and strengthened, role and participation of various stakeholders in society in anti-corruption have been promoted, and international and regional cooperation on anti-corruption boosted up.

Also in the framework of UNCAC implementation, in conformity with the CoSP's Third Session's Resolution on review mechanism, Vietnam is under review in the second year of the first review cycle (second half of 2011 and first half of 2012). To prepare well for this review, Vietnam has seriously made its self-assessment report on UNCAC implementation based on the self-assessment checklist and with the active participation of ministries, agencies, researchers, social-political organizations, private sector entities and international donors. The report has been developed and completed on time. The report will be sent to the CoSP Secretariat in June 2012.

• Implementation of anti-corruption commitments related to APEC integrity standards: Vietnam has made great efforts in developing and improving the objective and transparent criteria that assure the integrity, openness, transparency and efficiency of the operations of the administration and of the public official and public servants. A number of admistrative operations have been procedurized; repsonsiblity of head of the agency where corrupt act occurs and accountability of public officials and public servants have been clearly regulated; the recruitment, appointment, rotation of public officials have been implemented in conformity with the principles of transparency, efficiency and other objective criteria on capacity and contributions; reform of public servants' salary mechanism and integrity-mantaining mechanism in some sectors prone to corruption have been actively carried out; codes of conduct for public servants have been adopted by almost all administrative agencies and some sectors prone to corruption have launched the campaign of saying no to bribes and corruption; regulations on rewardings and punishments have been strengthened.

• Implemetation of APEC commitments relating to safe havens: Vietnam determines to actively prevent corruption and strictly punish corrupt acts, thus definitely denying safe haven to officials and individuals guilty of corruption. Vietnam's legal provisions on anti-moneylaundering have been promulgated and will be improved and developed into a separate law.

In the framework of UNCAC implementation, Vietnam is actively studying for internalizing and effectively implementing the 's provisions on anti-moneylaundering, laundering of proceeds of crime, freezing, seizure and confiscation, bank secrecy, asset recovery.

• Implementation of commitments relating to private sector: At present, Vietnam's laws have not had specific regulations on anti-corruption in private sector. Only behaviours that violate the proper operations of agencies and organizations by persons having powers while doing his/her duties are considered corruption crime. Until now, Vietnam's laws and policies on anti-corruption only consider staff and public officials as subjects of corruption behaviours, but in fact, bribery behaviours of citizens in private sector are also regulated in criminal laws and appear to be appropriate and effective. Thus, with business sector, Vietnam actively promote the development of standards to strengthen the integrity in business, in which, code of conduct is to ensure the accuracy, integrity in business and prevent from interest conflict; promote the duplication of good practice of the commerce in business. Vietnam participated (together with Chile and Australia) in the project to pilot introduce the APEC Code of Conduct for business for small and medium enterprises. Vietnam Chamber of Commerce and Industry (VCCI) carried out a lot of activities to support Vietnam's business community in building and developing healthy business culture, such as: organizing trainings to support and provide for enterprises tools, guiding documents and case studies to develop and implement consistently and transparently in enterprises, solve situations when being required to give bribe; regularly organize workshops to share good practices, typical examples in Vietnam to raise the awareness. According to a recent study of VCCI, almost Vietnam's enterprises do not have specific regulations on anti-corruption but do have codes of conduct. Vietnam's business community's awareness and actions in saying no to corruption and bribery have been step by step enhanced.

• Vietnam is an active member of some regional organizations and fora on inspection, complaint and denunciation settlement and anti-corruption, such as: SEAPAC, ADB/OECD Initiative for anti-corruption in Asia and the Pacific, APEC ACT, AOA. The Government Inspectorate of Vietnam has signed bilateral agreements with relevant agencies of many economies in the region. Over the past years, Vietnam's regional cooperation in anti-corruption has continuously developed, focusing on: information, experiences and skills exchange, capacity building, investigation support, organisation of regional and international workshops.
Vietnam has also signed an agreement on legal assistance and extradition with Korea and Australia and is a member of the ASEAN Legal assistance Agreement.

2. Summary of forward work program to implement Leaders' and Ministers' commitments.

• Continue to implement the UNCAC Implementation Plan: core tasks include: improvement of legal frameworks and institutions on anti-corruption, effective implementation of legal provisions on anti-corruption, strengthening the inspection, examination, audit, investigation, prosecution and trial to effectively prevent and strictly punish corrupt acts, enhancement of education and dissemination on anti-corruption,

active participation in international cooperation activities on anti-corruption. To specify and effectively implement these core tasks, the Government is developing and will soon complete in 2012 the Plan to implement UNCAC - Phase 2 (2012-2016) and the Regulations on Coordination among Agencies to implement UNCAC.
Review and improve legale frameworks and institutions: In 2012, review the 5-year implementation of the Law on Anti-corruption 2005 together with preliminary review of the first stage of implementing the National Strategy on Anti-corruption to 2020. The results from these reviews are the practical basis for study, propose and recommend comprehensive amendments on anti-corruption laws of Vietnam. It is scheduled that in 2013 Vietnam National Assembly will see and comment of the Draft (Amended) Law on Anti-corruption, Draft (Amended) Penal Code, Draft (Amended) Criminal Procedures Act and the Draft Ordinance on profession training of certain judicial positions. Accordingly, UNCAC's requirements on criminalization and law enforcement, international cooperation will be studied for being incorporated into relevant laws of Vietnam. In this year 2012, the Government of Vietnam will issue the Decree on the accountability of the officials and public servants, conduct overall assessment of the pilot implementation of the Scheme 137 (including anti-corruption into education and training curricula); the Ministry of Public Security will approve the Project on further enhancing corruption crime investigation equipments and techniques.
As for improving the institutions against corruption, the 5th Session of the 11th Central Executive Committee of the Communist Party of Vietnam which just concluded in the second week of May 2012 decided to establish the Central Steering Committee on Anti-corruption under the Party Polibureau led by the Party's Secretary General.

- Implementing commitments relating to APEC integrity standards: Enhance forms, methods and the efficiency of moral education and anti-corruption law dissemination, combined with ensuring the living and working conditions for public servants (Scheme to renovate salary to 2020); further strengthen the public and transparency measures through promoting administrative reform and judicial reform; research to amend, supplement and complete the related legal documents to publicize the asset and income of officials not only within agencies and organizations but also to the whole public.

- Implementation of commitments relating to anti-corruption in private sector: to continue to promote the integrity culture in business.

- Further participation in the regional and international anti-corruption cooperation activities.

3. Summary of capacity building needs and opportunities that would accelerate/ strengthen the implementation of APEC Leaders' and Ministers' commitments by your economy and in the region.

Some capacity building needs to implement UNCAC effectively: (1) support of experts and resources to review the implementation of policies and laws on anti-corruption; (2) support of experts and good experiences to propose the internalization of the Convention's requirements on criminalization and legal implementation (amend and supplement offences of receiving bribery of foreign public officials or public officials in public international organizations, offence of illegal enrichment and offences of corruption in private sector....); (3) support of resources for implementing the community's initiatives on anti-corruption and raising awareness and participation of the public in anti-corruption;(4) support of experiences and resources for training of judicial titles, especially skills, techniques in investigation, prosecution and judgment of corruption offences, especially offences having foreign elements; (5) Initial support of modern equipments for prosecuting agencies in the investigation, prosecution and judgment of corruption offences; and (6) support of experiences and resources for Vietnam to effectively participate in regional and international platforms on strengthening the cooperation in investigating, prosecuting and judging corruption offences.

I. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO UNCAC PROVISIONS

LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Take All Appropriate Steps Towards Ratification of, or Accession to, and Implementation of the UNCAC:

- Intensify our efforts to combat corruption and other unethical practices, strengthen a culture of transparency, ensure more efficient public management, and complete all appropriate steps to ratify or accede to, and implement the UNCAC.
- Develop training and capacity building efforts to help on the effective implementation of the UNCAC's provisions for fighting corruption.
- Work to strengthen international cooperation in preventing and combating corruption as called for in the UNCAC including extradition, mutual legal assistance, the recovery and return of proceeds of corruption.

I.A. Adopting Preventive Measures (Chapter II, Articles 5-13)

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RELEVANT UNCAC PROVISIONS

Chapter II, Articles 5-13 including:

- Art. 5(2) Establish and promote effective practices aimed at the prevention of corruption.
- Art. 7(1) Adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials that:
  - Are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;
  - Include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;
  - Promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;
  - Promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions.
- Art. 7(4) Adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.
- Art. 8(2) Endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.
- Art. 8(5) Establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials. Art. 52(5)/(6) [sharing the information on the financial disclosures that should be in place]
- Art. 10(b) Simplify administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities.
- Art. 12(2)(b) Promote the development of standards and procedures designed to safeguard the integrity of private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State.
- Art. 12(2)(c) Promote transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities.
- Art. 13(1) Promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Legal frameworks and policies on corruption prevention:

In the current phase of Vietnam's fight against corruption, Vietnam considers prevention as a strategic, fundamental and long-term solution to actively prevent risk of corruption and gradually push back corruption. The promotion of corruption prevention mechanisms to: (i) contribute to limit defects, heal the holes in policies and legal system, especially in the field of economic management, (ii) set the stage for improving the effectiveness and efficiency to detect and handle corruption as well as compensate for corruption behaviours; (iii) strengthening the role and the active participation of the people, the civil society organizations and the mass media in social management, state management in general and the prevention and fight against corruption in particular, (iv) contribute to building a professional management with high integrity and a clean and corruption-free society.

In the past five years, Vietnam has issued many important legal documents on the prevention of corruption which include: the Anti-corruption Law 2005, the Law on Complaints 2011, and the Law on Denunciations 2011. Law on Anti-Corruption 2005 was adopted on 29 November 2005 at the 8th session of the 11th National Assembly, took effect from 01 June 2006. The Law was amended and supplemented at the first session of the 12th National Assembly on 04 June 2007. In all legal documents on the prevention of corruption, the Anti-Corruption Law 2005 is the most important document which establishes the basic legal framework for the fight against corruption in Vietnam.

To implement the Law on Anti-corruption, the Government of Vietnam issued a series of bylaws which provide details and guide the implementation, including Decree No. 120/2006/ND-CP providing detailed regulations and guiding some articles of the Law on Anti-corruption; Decree No. 107/2006/ND-CP handle the responsibility of the

heads of agencies, organizations or units where corruption in the agencies, organizations and units under their management; Decree No. 37/2007/ND-CP on transparency of assets and income (amended and supplemented in 2011); Decree No. 47/2007/ND-CP providing detailed regulations and guiding some articles of the Law on Anti-corruption on the role and responsibility of society in preventing corruption and Decree No.158/2007/ND-CP on the list of work positions subject to periodical rotation and the term for rotations for cadres, public employees and public servants; Decision No. 64/2007/TTg of Prime Minister promulgating the regulation on giving, receiving and handing-over of gifts by state budget-funded agencies, organizations and units and cadres, public employees and servants; Directive No. 20/2007/CT-TTg of the Prime Minister on August 24, 2007 on salary payment through bank accounts to state budget beneficiaries, Decision No. 137/2009/QD-TTg to approve the Scheme to introduce anti-corruption contents into the training and education curricula (Scheme 137), Resolution No. 21/2009/NQ-CP of adopting the National Strategy on Anti-corruption to 2020; Joint Circular No. 03/2011 TTLT-BNV-TTCP dated 6 May 2011 of the Ministry of Home Affairs and the Government Inspectorate on the recognition of individuals for excellence in the corruption denunciation and detection, Circular No. 11/2011/TT-TTCP of criteria and evaluation of corruption prevention, Joint Circular No. 12/2011/TTLT-TTCP-VKSNDTC-TANDTC-KTNN-BQP-BCA between the Government Inspectorate, Supreme People's Procuracy, Supreme Court, the State Audit, Ministry of Defence and Ministry of Public Security providing the exchange, management and use of information, data on anti-corruption, etc.

- ***Art. 5(2) Establish and promote effective practices aimed at the prevention of corruption.***

Many corruption prevention measures provided in the Anti-corruption Law have been seriously implemented at all levels and sectors, initially created a good effect in prevention of corruption and become the effective practices to prevent corruption, notably:
- Propaganda, education and raising awareness on the prevention of corruption: Vietnam made extensive propaganda at all levels and sectors and among all the components of the society in order to raise their awareness on policies and laws on anti-corruption and encourage their participation in the prevention and fight against corruption. Besides, since 2009, Vietnam has actively implemented Scheme 137 - to introduce anti-corruption contents into the training and education curricula. Beneficials of this Scheme are public servants through training programs and courses (see details in content of Article 7 (1) below) and students of schools and universities, colleges and vocational secondary education through the curricula.
- Ensuring public transparency of assets and incomes of public officials and public servants: the public officials and public servants declare their assets and income annually. Officials holding the position of deputy head of division and above in the agencies, organizations and units, people engaged in budget management and property of the State or directly involved in handling the public services, the candidates of National Assembly and People's Councils are obliged to declare their assets and declare every changes in their assets and their spouses and minor children's assets. (See details in the report contents for Article 7 (4), Article 8 (5) below).

Vietnam carried out competitions to attract local-level initiatives on anti-corruption. We then sponsored these initiatives to implement in real life. The best practices from these activities will be considered good sources for developing relevant policies. Up to now, Vietnam organized two competitions in this model. They are Vietnam Innovation Day 2009 (VID 2009) with the theme of "More Accountability and Transparency, Less Corruption". In the framework of these programs, 59 transparency and anti-corruption projects at local level have been implemented with the support from the World Bank and other international organizations. These projects have initial success, create positive effect in the community as well as play the role of good practices for Vietnam to apply in developing and improving relevant policies.

- ***Art. 7(1) Adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials that:***
  - ***Are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;***
  - ***Include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;***
  - ***Promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;***
  - ***Promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions.***

According to the Law on public servants 2008, the recruitment of public servants in Vietnam shall be carried out through examination. The form and contents of examination to recruit public servants must be suitable to each sector and occupation, ensuring that persons with appropriate qualities, qualifications and capabilities are selected (Article 37). Principles for public servant recruitment are clearly defined in the law and ensure strict implementation in practice (Article 38). According to the Article, the recruitment of public servants should ensure publicity, transparency, objectivity and legality, ensure competitiveness, select proper persons who meet task and working position requirements.
Besides, from 2009 to now, Vietnam is actively implementing Scheme 137 to provide knowledge on anti-corruption for public officials and public servants, help them under-

stand the policies of the Party and the provisions of laws on anti-corruption, raise their awareness and responsibility in anti-corruption. These contents can be integrated into the subjects within the framework of training, retraining and capacity building courses for officials, public servants or through other attractive forms of extracurricular such as: thematic discussion on anti-corruption and the corruption cases, dissemination through newsletters, audio recordings, radio and television, incorporating anti-corruption content in the cultural and art activities, organizing competitions on anti-corruption.

- ***Art. 7(4) Adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.***

Art. 8(2) Endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.
Art. 8(5) Establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

The Law on Anti-corruption 2005 regulates measures to prevent corruption and promote transparency in assets and income. The Law stipulates the implementation of publicity, transparency in 18 fields of activities within the state apparatus including administrative management activities for State and judicial activities. The Law provides regulations on the rights required to provide information of agencies, organizations and individuals; the development and implementation of norms and standards in agencies, organizations, units of the State apparatus; the promulgation and implementation of codes of conduct, ethics rules, and position rotation of public servants. Assets and income transparency mechanism is initially established to control the illicit income and conflicts of interest in performing official duties of cadres and public servants.

The Government issued Decree on asset and income transparency in 2007 (Decree No. 37/2007/ND-CP, amended and supplemented in 2011). According the Decree, the officials and public servants who have been appointed or doing tasks related to money management, property of the State or regular contact with citizens and businesses (Decree 37/2007/ND-CP on transparency of assets and income, as amended and supplemented in 2011) have to declare their assets and incomes.

Those who have to declare are public officials and public servants from the position of deputy head of divisions or higher positions, people engaged in budget management and property of the State or directly involved in handling the public services, the candidates of National Assembly and People's Councils. The above-mentioned subjects have to declare assets and every changes in assets under their ownership and assets owned by spouses and minor children. The declaration shall be conducted annually according to the form. Subjects of declaration are obliged to declare the additional details of the declaration form when they have new properties or incomes. If it is found out that the declaration of assets and income was not truthful, the subjects could face the highest form of discipline - dismissal. The declaration of assets and incomes are open at his/her agency. Mechanism to verify the declaration and publicize the results after verification has been prescribed for certain cases.

Vietnam has also promoted openness and transparency in the operation of agencies, organizations and units. All levels of authorities and public sectors publicize their procedures, processes and time limit for the service; publicize the state budget usage, etc..; review the list of state secrets to abolished unnecessary items. The public agencies of all level also provide relevant information as requested by the agencies, organizations, units and people. (See the explanation for Article 10 (b) and Article 52 (5)/(6) below)

Besides, Vietnam has established and implemented specific norms, standards and public of these standards to control corruption and reduce waste. The Government of Vietnam has reviewed and promulgate, amend and supplement the regulations on specific norms and standards in all fields, focusing on a number of areas high-prone to corruption as land and construction, public assets management
In 2007, the Prime Minister issued Instruction No. 20/2007/CT-TTg dated August 24, 2007 on paying salary through bank account. Currently, the vast majority of central agencies and most local agencies have adopted this method of payment.

To avoid interest conflict and prevent people from abusement, the Government requires that retired officials and public servant should not do businesses in the sectors relating to his late positions after 6 months to 36 months according to the different sectors. The Government also develops the lists the position where rotation is needed to prevent corruption. The normal period of rotation is 3 years. Each ministry and sector develops the list for itself in official rotation according to the Regulations of the Government.

- ***Art. 52(5)/(6) [sharing the information on the financial disclosures that should be in place]***

The Government of Vietnam issued several regulations on financial disclosure for agencies. According to Government Decree No. 71 dated 08/09/1998 (issued regulations to implement democracy in the agency's activities), staff and public servants must be acknowledge on annual operating budget, including state budget and other

funding resources and annual liquidation report. The Prime Minister issued Decision No. 192/2004/QD-TTg dated 16 November 2004 - Promulgating the Regulation on financial disclosure for state funded agencies at all levels, the accounting unit, the organizations with state budget support, infrastructure investment projects using state budget funds, the state-owned enterprises, funds from the state budget and funds from the contributions of the people. Financial publicity is a measure to promote the ownership of officers and state employees, collective workers and people in the implementation of the right to inspect and supervise the management and use of State money and properties. This is also a measure to effectively mobilize and manage people's contribution as prescribed by law; promptly detect and discontinue the violations of financial management regime ensuring the effective use of state budget. This is also a tool to control waste and promote thrift practices. Only the documents and data considered state secret are not publicized. The financial disclosures are made through a variety of forms: published in the annual meetings of agencies; publications; posted up at the office at least 90 days; posted on the website or announced in mass media. The implementation of these regulations is fully conducted by the majority of agencies and units under the Regulations and has become a common practice in the current financial reporting and accounting system.

- ***Art. 10(b) Simplify administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities.***

To prevent corruption more effectively, Vietnam has carried out administrative reform campaigns at all levels and sectors and initially witnessed remarkable results. The Prime Minister issued Decision No. 30/QD-TTg on January 10 2007 approving the Scheme "Simplifying administrative procedures in the fields of State management in 2007-2010" (in short "Project 30") and Decision No. 07/QD-TTg dated January 04, 2008 issue Implementation Plan for Project 30. The Scheme provides a comprehensive, open and transparent solution system with a view to collecting information, reviewing and simplifying administrative procedures. With the initial success of Project 30, nowadays, Vietnam has established and published the national database on administrative procedures at four levels of government and public on the Internet. Government has adopted many resolutions to simplify thousands of administrative procedures for under the management functions of 24 ministries. This is an important legal basis for ministries, branches and localities to simplify the administrative procedures to facilitate the life of people and businesses, while ensuring the management objectives of the State. Up to the end of 2010, anyone who is in Vietnam or foreign country could access, monitor the implementation of administrative procedures at all levels of the government all over the country through the website of the working group in charge of administrative reform of the Prime Minister or the portal of the Government. People can also print the information form, declaration form to fill in rather than having to buy them or come to administrative agencies to get one. An automatic support system on the network is also set up to online support people and businesses seeking administrative procedures and declaration forms, administrative declaration forms.

- ***Art. 12(2)(b) Promote the development of standards and procedures designed to safeguard the integrity of private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State.***

Art. 12(2)(c) Promote transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities.

According to Article 87 of the Law on Anti-corruption, business associations and professional associations are responsible for holding, encouraging and supporting their members' participation in building healthy and corruption-free business culture. Vietnam encourages the businesses to complete fairly with each other and to promote internal monitoring system prevent corruption and bribery practices.

Annually, Vietnam Chamber of Commerce and Industry (VCCI) organizes training courses to support and provide tools and guiding documents as well as case study to develop and implement these tools and recommendations consistently and in transparency. These courses also provide recommendations for businesses in settling confusing situations of being harassed or asked for bribery. There are also workshops to share good practices and good examples in Vietnam to raise awareness. The results of a study carried out by VCCI recently show that almost all Vietnamese businesses do not have specific regulations on anti-corruption although most of them have code of conducts and code of ethics.

- ***Art. 13(1) Promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption.***

The Law on Anticorruption of Vietnam has a separate chapter on the role and responsibilities of the society in anti-corruption (Chapter VI) with detail regulations on the responsibilities as well as the role of political-social organizations, media, businesses, citizens and people's inspection board in fighting against corruption and monitoring the implementation of the laws on anti-corruption.
State agencies, political organizations, socio-political, and press agencies shall, within the scope of their respective duties and powers, have the right to request relevant

agencies, organizations, and/or units to provide information about their operations and activities in accordance with the provisions of law (Article 31 Law on Anti-corruption). According to the provisions of laws, The Vietnam Fatherland Front shall have the responsibilities to Encouraging people to participate actively in detecting and denouncing corrupt acts. Vietnam also encourages press agencies and correspondents to report on corruption cases and anti-corruption activities. Recently, Vietnam's press agencies have actively participated in prevent and detect corruption cases. In Vietnam, press agencies and correspondents shall have the right to request competent agencies, organizations and individuals to provide information and documents relating to corrupt acts. The requested agencies, organizations or individuals shall be responsible for providing such information and documents in accordance with the provisions of law. In the case where the requested agencies, organizations or individuals refuse to provide the information or documents, they shall respond in writing and specify reasons for such a refusal.

Annually, Vietnam encourages and commends those who have remarkable achievements in fight corruption. Vietnam also has active mechanism to protect whistle-blowers (keep their personal information in secret, protection in working locations, protection in living residents, protection of their life, health, honour, dignity and prestige of whistle-blowers.

Vietnam carried out competitions to attract local-level initiatives on anti-corruption. We then sponsored these initiatives to implement in real life. The best practices from these activities will be considered good sources for developing relevant policies. Up to now, Vietnam organized two competitions in this model. They are Vietnam Innovation Day 2009 (VID 2009) with the theme of "More Accountability and Transparency, Less Corruption". In the framework of these programs, 59 transparency and anti-corruption projects at local level have been implemented with the support from the World Bank and other international organizations. These projects have initial success, create positive effect in the community as well as play the role of good practices for Vietnam to apply in developing and improving relevant policies.
The information on these competition programs could be found at the following links: http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/VIETNAMEXTN/0,,contentMDK:22007886~pagePK:1497618~piPK:217854~theSitePK:387565,00.html, or
http://www.thanhtra.gov.vn/ct/news/Lists/TinThanhTra/View_Detail.aspx?ItemId=2582/

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

- Review and complete prevention institution: In 2012, review the 5-year implementation of the Law on Anti-corruption 2005 together with preliminary review of the first stage of implementing the National Strategy on Anti-corruption to 2020. The results from these reviews are the practical basis for study, propose and recommend comprehensive amendments on anti-corruption laws and recommendations of Vietnam. It is scheduled that Vietnam National Assembly will see and comment of the Draft (Amended) Law on Anti-corruption. In this year 2012, the Government of Vietnam will issue the Decree on the accountability of the officials and public servants.
- Strengthen inspection, audit, investigation, prosecute and judges to prevent corruption effectively.
- Enhance education and communication on the prevention of corruption and mobilize the active participation of society in the fight against corruption: In 2012, Vietnam will apply the Scheme to add anti-corruption contents to training and retraining programs. Also, in the years of 2012-2015, Vietnam continues to implement Vietnam Anti-corruption Initiative (VACI) to seek and fund for practical initiatives of anti-corruption in the community. Through the program, the feasible and practical idea on larger scale will be transformed into policies, contribute to improving the effectiveness of prevention and fight against corruption. Besides, in the near future, Vietnam will proceed to consolidate and complete the mechanism of ensuring the participation of citizens and social organizations in the fight against corruption.

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

Some capacity building needs:
(1) support with experts and resources to review the implementation of policies and laws on anti-corruption;
(2) support to implement the initiatives anticorruption from the local level and improve the awareness and the participation of the public in anti-corruption activities.

I. B. Criminalization and Law Enforcement (Chapter III)

RELEVANT UNCAC PROVISIONS

- Art. 15 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
  - The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
  - The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.
- Art. 16(1) Adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally,
the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage,
for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.
- Art. 17 Adopt measures to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.
- Art. 20 Adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.
- Art. 21 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:
  - The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;
  - The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.
- Art. 27(1) Adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

- ***Art. 15 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:***
  - ***The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;***
  - ***The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.***

Vietnam's Penal Code stipulates the offence of giving bribes in Article 289. Accordingly, anyone giving bribes of two million VND or more, or less than 2 million Dong but causing serious consequences or repeated violations, will be charged with criminal liability. The bribes are not limited only to money, property or other material benefits (i.e. benefits valued in money). Also, as specified in Article 277 of the Penal Code of Vietnam, the violated object of the offence is the proper functioning of the agencies and organizations. As a result, the objective behavior of offering bribes is understood as the offering or requesting the offering of money, property or other material benefits to people who hold certain positions and powers so that they do or not do something as requested or for the benefits of the person giving bribes. Based on the above provisions, objectively, the offence of offering bribes is completed when there is an act of bribe giving. Therefore, even in cases where someone makes a promise or suggests to offer bribes, and there is evidence to prove that it would cause the public servant to act or refrain from acting in the process of the conduct of his civil service, he/she would be charged with criminal liability for the offence of preparing to commit crime (in case the crime is of a serious and especially serious types, as specified in paragraphs 3 and 4, Article 289 and Article 17 of the Penal Code) or an incomplete offence (Article 18, Penal Code). Also, according to Article 277, persons holding positions as mentioned above are those who have been appointed, elected, contracted or recruited in other forms, paid or unpaid, are assigned to perform certain public services, and possess certain powers while performing official duties.
Vietnamese law only stipulates bribes in the form of material benefits, and criminal liabilities as well as the frame for penalties are decided corresponding to the value of the bribe. Thus, if the bribes are intangible benefits, the definition and determination

of criminal liability will encounter certain difficulties. For example, business owner A promises to find a job for the son/daughter of official B, so that official B approves a real estate project for business A. In this case, the determination of criminal liability of the business owner A would lack a legal basis under existing Vietnamese law. In addition, in trial practices difficulties also occur in gathering evidence when the bribery giver has made only a promise or suggestion, and it is difficult to prove the relationship between that objective behavior and the act or refrain from acting in the exercise of official duties of persons holding public office.

Vietnam has always consistently shown its strong determination in the fight against corruption. Despite many difficulties it has to encounter in the prosecution of criminal liability of civil servants for the act of suggesting an illegal benefits in order to do or not do a thing during the conducting of public service, Vietnam has promulgated and implemented many policies and measures to prevent this behavior of officials, public officials, such as: require agencies, organizations, units to build the codes of conducts for officials, public officials, officials and considered it as a content of inspection when conducting planned inspections; enhance publicity, transparency and accountability of officials, public servants.

- ***Art. 16(1) Adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.***

The Penal Code of Vietnam has provisions on the offence of giving bribes but only covers bribes given to persons holding positions and powers in the State apparatus. The Code does not provide for the application to foreign public officials or officials of public international organizations. Article 277 of the Penal Code provides that "position-related offences are acts that violate proper functioning of agencies and organizations, conducted by persons holding position in their performance of public duties". Thus, the object protected by the provisions on bribery is normally understood as only the proper functioning of agencies and organizations within the State apparatus of Vietnam. Vietnam has partially complied with obligations of paragraph 1, article 16 of the Convention. Clear regulations in Vietnam's Penal Code on the offence of giving bribes to foreign public officials or officials of public international organizations are being researched and implemented in the coming time.

- ***Art. 17 Adopt measures to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.***

Embezzlement, misappropriation or other diversion of property by a public official is stipulated in Articles 278 and 280 of the Penal Code of Vietnam. In accordance with Article 278, those, who abuse their positions and/or powers to appropriate property that they have the responsibility to manage and that is valued at not less than two million VND, or less than 2 million Dong but causing serious consequences, as well as offenders who have been disciplined for such acts but continue to commit them and those committing the offence more than once shall be subject to criminal liability. As far as the subject is concerned, the mental element for this offence is direct intent. Similarly, pursuant to Article 280, those who abuse their positions and/or powers to appropriate the property of other persons which is valued at not less than two million Dong, or less than two million Dong but causing serious consequences, as well as offenders who have been disciplined for such acts or convicted of corruption charges but continue to commit them shall be subject to criminal liability. As far as the subject is concerned, the mental element for this offence is also direct intent.

- ***Art. 20 Adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.***

Challenges and difficulties for the criminalization of this offence are resulted from the following points:

(1) Act of Illicit enrichment has not been established as criminal offence in the 1999 Penal Code; regarding legal tradition, the act of illicit enrichment in Vietnam is not considered violations of laws and has not been considered criminal act.

(2) Requiring public servants to prove the origin and reasons of their income is completely infeasible and inappropriate with historical practices and material and technical conditions of Vietnam in this stage. At present, Vietnam has not developed systems to monitor and control income of the citizens. Income and assets transaction of the citizens in general have not been controlled by the banks. Incomes added to official salary can be obtained from various sources. On the other hand, in traditional family model with many generations living together, property does not belong to the husband and wife themselves but belongs to all generations in the family. Therefore, it's very complicated to define property of each member of the family.

(3) The requirement for public servants to prove the origins of their incomes is contradictory from the principle on proving obligations stipulated in the criminal proceedings of Vietnam (according to the Criminal Proceedings Laws of Vietnam, only

proceedings agencies bear the obligations to prove criminals; the citizens do not have the obligations to prove themselves innocent)

Regarding the possibilities of Vietnam to meet the above mentioned requirement of the Convention, it can be argued as follows:

First: Policies and laws of Vietnam always encourage legal and proper enrichment acts of the citizens. The policy to diversify economic sectors, mobilize all social resources for the development of the economy under the regulation of the state through macroscope which have created favourable conditions for a considerable part of the citizens to legally enrich themselves, thus, contribute more to the State and society. On the other hand, all policies and laws of Vietnam as well as morality of the Vietnamese criticize acts of illicit enrichment, considering illicit enrichment as acts against the interests of the nation, community and general morality.

Second: At present, the existing laws of Vietnam already contain preventive measures, contributing to detecting illicit enrichment as follows:
Article 2, Para 3 of 2005 Anti-corruption Law stipulates: "Transparency of assets and income is the declaration of assets, income of the persons subjected to obligations to declare and when it's necessary to verify and conclude"
Item 4, Chapter II of 2005 Anti-corruption Law clearly provides for subjects of declaration, types of assets to be declared, procedures to declare, procedures to verify declared assets, conclusions on the transparency in the declaration of assets and publicity of those conclusions, handling of untrue declaration. Chapter II, Article 53, para 4, of 2005 Anti-corruption Law stipulates that the Government is assigned to submit to the National Assembly for approval the enactment of legal normative documents on controlling income of persons holding positions and powers.

It's worth noting that Article 52 of Anti-corruption Law has regulations on charging persons providing untrue assets declaration: "Persons providing untrue assets declaration will be punished according to the laws. Decision to punish persons providing untrue assets declarations must be made public in the agencies, organizations where they are working; Persons in candidature of National Assembly deputies, People's Councils providing untrue assets declarations will be taken out of the list of candidates; persons, who are tentatively assigned, approved to certain positions, providing untrue assets declarations will not be assigned, approved to those tentative positions".
Decree No. 37/2007/NĐ-CP dated 9/3/2007 on Transparency of assets and income has provided in Article 33, Chapter IV 04 administrative sanctions for those who provide untrue, non-transparent assets declaration as follows: reprimanding, warning, salary degrading and degrading
So, the existing laws and policies of Vietnam have, to a certain extent, met this optional requirement of the Convention. Accordingly, administrative sanctions against those who provide untrue and non-transparent assets declaration indicate viewpoints and attitudes of the State towards acts of illicit enrichments. However, in order to criminalize this acts in order to fully meet the requirements of the Convention, this issue needs to be further studied by legal science branch of Vietnam, to be considered by authorized agencies of Vietnam with a view to criminalize it in appropriate time.

- ***Art. 21 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:***
  - ***The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;***
  - ***The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.***

Bribery in the private sector is regulated in article 21 of the Convention. Penal Code of Vietnam does not touch upon bribe offering and receiving in private sector. Only acts infringing legitimate operations of agencies and organizations committed by people holding an office while performing a public duty are regarded as corruption offences. At present, Anti-corruption Law of Vietnam has not specifically provided for bribery by entities in the private sector. Till now, anti-corruption laws and policies of Vietnam have just only considered public servants as subjects of corruption; but in fact, acts of bribery and profiteering by citizens in the private sector have also been regulated by criminal laws and the facts have shown a comparative appropriateness and effectiveness. In other words, the laws of Vietnam have met, in a certain extent, the above requirement of the Convention.

- ***Art. 27(1) Adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.***

Contents of this article was regulated and applied in Vietnam. Article 20 of Penal Code stipulates that complicity is where two or more persons intentionally commit a crime. The organizers, executors, instigators and helpers are all accomplices.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

- Review; finalize legislations according to requirements of the Convention. In 2012, carry out the review of 5-year implementation of the Anti-corruption Law (issued in 2005), together with review of the 1st period of implementing the National Anti-corruption Strategy to 2020. Results of the review will be the practical baseline to do research, propose and recommend the comprehensive revision of anti-corruption policies and laws of Vietnam. Tentatively, in 2011, The National Assembly of Vietnam will consider and give opinions on the Draft Anti-corruption Law (revised), Draft Penal Code (revised); Draft Criminal Proceedings Code (revised) and Draft Ordinance on vocational training for some judicial titles. Accordingly, the Convention's requirements on criminalization and legal implementation will be studied and proposed to add in relative laws of Vietnam (amend and supplement offences of receiving bribery of foreign public officials or public officials in public international organizations, offence of illegal enrichment and offences of corruption in private sector....). In 2012, Ministry of Public Security will approve Proposal on strengthening equipments; improve skills and techniques in investigating corruption criminals.
- Strengthening the inspection, investigation, audit, prosecution and judgment in order to contribute to handle corruption behaviours.

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

Some needs to support the capacity strengthening:
(1) Support of experts and good experiences to propose the internalization of the Convention's requirements on criminalization and legal implementation (amend and supplement offences of receiving bribery of foreign public officials or public officials in public international organizations, offence of illegal enrichment and offences of corruption in private sector....);
(2) Support of experiences and resources for training of judicial titles, especially skills, techniques in investigation, prosecution and judgment of corruption offences, especially offences having foreign elements;
(3) Initial support of modern equipments for prosecuting agencies in the investigation, prosecution and judgment of corruption offences;
(4) Support of experiences and resources for Vietnam to effectively participate in regional and international platforms on strengthening the cooperation in investigating, prosecuting and judging corruption offences.

RELEVANT UNCAC PROVISIONS

- Art. 14(1) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons, that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering.
- Art. 14(2) Implement feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders.
- Art. 14(3) Implement appropriate and feasible measures to require financial institutions, including money remitters, to:
  (a) include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;
  (b) maintain such information throughout the payment chain; and
  (c) apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

- ***Art. 14(1) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons, that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering.***
- ***Art. 14(2) Implement feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders.***

In Vietnam Penal code (article 251), money laundering offences are regulated as follows:
"1. Any person using financial and/or banking operators or other transactions, legalize money and/or property obtained through the commission of crime or use such money and/or property to conduct business activities or other economic activities, shall be sentenced to between one and five years of imprisonment.
2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between three and ten years of imprisonments:
a) In an organized manner;
b) Abusing positions and/or powers;
c) Committing the offence more than once.
3. Committing the crime in particularly serious circumstances, the offenders shall be sentenced to between five and fifteen years of imprisonment.
4. The offenders may also be subject to the confiscation of property, a fine treble the

amount of money or the value of the property that have been legalized, to a ban from holding certain posts, practicing certain occupations, or doing certain jobs for one to five years."

Article 14 of the Law on credit organizations also regulates the responsibilities of the related subjects in anti money laundering.

In April 2009, the Prime Minister established the Steering committee on anti money laundering. The commission is headed by the permanent deputy Prime Minister. The members of this Committee are leaders of Relevant ministries and sectors. Its missions are guiding and coordinating between the agencies in anti money laundering activities in Vietnam. In August 2010, the Prime Minister decided to issue the National Action Plan on anti money laundering and terrorist financing.

The Government submitted the Draft law on money laundering to the National Assembly in the end of 2011. It is supposed that the Law will be issued in 2012.
The focal point for receiving and processing information in Vietnam is The anti money laundering information centre which is a unit of Vietnam State Bank. This centre will be responsible for strategy, orientation, policy, working plan on anti money laundering in Vietnam. The centre also cooperates with relevant agencies, organizations and individuals in implementing anti money laundering according to the rules of law. The anti money laundering information centre has rights to request relevant agencies, organizations and individuals provide information, documents and records on transactions according to the rules of law.

Vienam commits to fight against money laundering criminals together with other countries in the region and all over the world. Vietnam is an official member of APG since May 2007. Nowadays, Vietnam is making great efforts in developing a transparent financial system with a view to preventing the abusement of the criminals to facilitate illicit financial flow.

- ***Art. 14(3) Implement appropriate and feasible measures to require financial institutions, including money remitters, to:***

  (a) include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;
  (b) maintain such information throughout the payment chain; and
  (c) apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

This content is regulated in Decree 74/2005/ND-CP issued on July 06, 2005 of the Government on anti money laundering.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

The National Assemble will promulgate the Law on anti money laundering in 2012. After that, the Government will issue decrees guiding the implementation of the Law on Anti-Money Laundering to strengthen the legal framework for this crime.

II. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO APEC INTEGRITY STANDARDS (CROSS CHECK WITH I.A. ABOVE)

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LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Strengthen Measures to Effectively Prevent and Fight Corruption and Ensure Transparency by Recommending and Assisting Member Economies to:

- Establish objective and transparent criteria that assure openness for merit, equity, efficiency for the recruitment of civil servants, and promote the highest levels of competence and integrity;
- Adopt all necessary measures to enhance the transparency of public administration, particularly with regard to organization, functioning and decision-making processes;
- Develop and implement appropriate public financial disclosure mechanisms or codes of conduct for senior-level public officials [SOM III: Guidelines];

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Vietnam are trying our best to develop and complete objective and fair criteria to ensure the integrity, openness, transparency and effectiveness of state administrative activities and of the officials and public servants. Many administrative activities are regulated by procedures, the responsibilities of the head agencies and organizations when corruption offence happens and the accountability of the officials and public servants is regulated clearly. The recruitment, promotion, rotation of staff base on transparent and effective principle and objective criteria on capacity, contribution. Vietnam is under salary innovation and integrity support for some high - prone corruption sectors. The authorities of all levels and sectors issued code of conduct for their staff. There are anti-corruption campaigns, no bribery campaign in "sensitive" sectors. The regulations on awarding and discipline are also strengthened.

- ***Establish objective and transparent criteria that assure openness for merit, equity, efficiency for the recruitment of civil servants, and promote the highest levels of competence and integrity;***

According to the Law on public officials and public servants 2008, the recruitment of civil servants in Vietnam was carried out through examination. The form and contents of examination to recruit public servants must be suitable to each sector and occupation, ensuring that persons with appropriate qualities, qualifications and capabilities are selected (Article 37). Principles for public servant recruitment are clearly defined in the law and ensure strict implementation in practice (Article 38). According to the Article, the recruitment of public servants should ensure publicity, transparency, objectivity and legality, ensure competitiveness, select proper persons who meet task and working position requirements.

- ***Adopt all necessary measures to enhance the transparency of public administration, particularly with regard to organization, functioning and decision-making processes;***

Vietnam has also promoted openness and transparency in the operation of agencies, organizations and units. All levels of authorities and public sectors publicize their procedures, processes and time limit for the service; publicize the state budget usage, etc..; review the list of state secrets to abolished unnecessary items. The public agencies of all level also provide relevant information as requested by the agencies, organizations, units and people. The Law on Anti-corruption stipulates the implementation of publicity, transparency in 18 fields of activities within the state apparatus including administrative management activities for State and judicial activities.

- ***Develop and implement appropriate public financial disclosure mechanisms or codes of conduct for senior-level public officials [SOM III: Guidelines];***

Vietnam has established and implemented specific norms, standards and public of these standards to control corruption and reduce waste. The Government of Vietnam has reviewed and promulgate, amend and supplement the regulations on specific norms and standards in all fields, focusing on a number of areas high-prone to corruption as land and construction, public assets management

Assets and income transparency mechanism is initially established to control the illicit income and conflicts of interest in performing official duties of cadres and public servants. The Government issued Decree on asset and income transparency in 2007 (Decree No. 37/2007/ND-CP, amended and supplemented in 2011). According the Decree, the officials and public servants who have been appointed or doing tasks related to money management, property of the State or regular contact with citizens and businesses (Decree 37/2007/ND-CP on transparency of assets and income, as amended and supplemented in 2011) have to declare their assets and incomes.

Those who have to declare are cadres and civil servants from the position of deputy head of divisions in district level agencies or higher positions, people engaged in budget management and property of the State or directly involved in handling the public services, the candidates of National Assembly and People's Councils. The above-mentioned subjects have to declare assets, all changes in assets under their ownership and property owned by spouses and minor children. The declaration shall be conducted annually according to the form. Subjects of declaration are obliged to declare the additional details of the declaration form when they have new properties or incomes. If it is found out that the declaration of assets and income was not truthful, the subjects could face the highest form of discipline - dismissal. The declaration of assets and incomes are open at his/her agency. Mechanism to verify the declaration and publicize the results after verification has been prescribed for certain cases. .

In 2007, the Prime Minister issued Instruction No. 20/2007/CT-TTg dated August 24, 2007 on paying salary through bank account. Currently, the vast majority of central agencies and most local agencies have adopted this method of payment.

To avoid interest conflict and prevent people from abusement, the Government requires that retired cadres and public servant should not do businesses in sectors relating to his late positions after 6 months to 36 months according to the different sectors. The Government also develops the lists the position where rotation is needed to prevent corruption. The normal period of rotation is 3 years. Each ministry and sector develops the list for itself in official rotation according to the Regulations of the Government. Some associations issue their own code of conduct of its members; some specific such as health care, education, inspection have the separate professional ethic standard for their cadres and civil servants.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

Enhance forms, methods and the efficiency of moral education and anti-corruption law dissemination, combined with ensuring the living and working conditions for public servants (Scheme to renovate salary to 2020); further strengthen the public and transparency measures through promoting administrative reform and judicial reform; research to amend, supplement and complete the related legal documents to publicize the asset and income of officials not only within agencies and organizations but also to the whole public; move towards a significant reduction of cash payment in civil and economic transactions.
In 2012, the government to issue a decree on the accountability of pulic servants.

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

Needs of being support with international experts, international experiences and resources to implement educational and training programs to raise awareness, to develop and implement Scheme to renovate salary to 2020 for public servants, to continue promoting administrative reform and judicial reform effectively.

III. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO SAFE HAVENS (CROSS CHECK WITH I.C. ABOVE):

LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Deny safe haven to officials and individuals guilty of public corruption, those who corrupt them, and their assets:

- Promote cooperation among financial intelligence units of APEC members including, where appropriate, through existing institutional mechanisms.
- Encourage each economy to promulgate rules to deny entry and safe haven, when appropriate, to Officials and individuals guilty of public corruption, those who corrupt them, and their assets.
- Implement, as appropriate, the revised Financial Action Task Force (FATF) 40 Recommendations and FATF's Special Recommendations (Santiago Course of Action)
- Work cooperatively to investigate and prosecute corruption offenses and to trace freeze, and recover the proceeds of corruption (Santiago Course of Action)
- Implement relevant provisions of UNCAC. These include:
  - Art. 14 (Money laundering)
  - Art. 23 (Laundering of Proceeds of Crime)
  - Art. 31 (Freezing, seizure and confiscation)
  - Art. 40 (Bank Secrecy)
  - Chapter V (Asset Recovery)

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

See Item I.C. Anti-money laundering of the report.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

See Item I.C. Anti-money laundering of the report.

IV. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO PRIVATE SECTOR CORRUPTION:

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LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Fight both Public and Private Sector Corruption:

- Develop effective actions to fight all forms of bribery, taking into account the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or other relevant anticorruption conventions or initiatives.
- Adopt and encourage measures to prevent corruption by improving accounting, inspecting, and auditing standards in both the public and private sectors in accordance with provisions of the UNCAC.
- Support the recommendations of the APEC Business Advisory Council (ABAC) to operate their business affairs with the highest level of integrity and to implement effective anticorruption measures in their businesses, wherever they operate.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

At present, Vietnam's laws have not had specific regulations on anti-corruption in private sector. Only behaviours that violate the proper operations of agencies and organizations by persons having powers while doing his/her duties are considered corruption crime. Until now, Vietnam's laws and policies on anti-corruption only consider staff and public officials as subjects of corruption behaviours, but in fact, bribery behaviours of citizens in private sector are also regulated in criminal laws and appear to be appropriate and effective. Thus, with business sector, Vietnam actively promote the development of standards to strengthen the integrity in business, in which, code of conduct is to ensure the accuracy, integrity in business and prevent from interest conflict; promote the duplication of good practice of the commerce in business. Vietnam participated (together with Chile and Australia) in the project to pilot introduce the APEC Code of Conduct for business for small and medium enterprises. Vietnam Chamber of Commerce and Industry (VCCI) carried out a lot of activities to support Vietnam's business community in building and developing healthy business culture, such as: organizing trainings to support and provide for enterprises tools, guiding documents and case studies to develop and implement consistently and transparently in enterprises, solve situations when being required to give bribe; regularly organize workshops to share good practices, typical examples in Vietnam to raise the awareness. According to a recent study of VCCI, almost Vietnam's enterprises do not have specific regulations on anti-corruption but do have codes of conduct. Vietnam's business community's awareness and actions in saying no to corruption and bribery have been step by step enhanced.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

From present to 2016: review, finalize legislations on anti-corruption, study and propose to amend and supplement in Vietnam's law offences of receiving bribes for foreign public officials or public officials of public international organizations, offence of illegal enrichment, offences of corruption in private sector.

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

Needs to have supports of experts and good experiences to add and amend Vietnam's laws offences of receiving bribes for foreign public officials or public officials of public international organizations, offence of illegal enrichment, offences of corruption in private sector.

V. ENHANCING REGIONAL COOPERATION

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LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Strengthen Cooperation Among APEC Member Economies to Combat Corruption and Ensure Transparency in the Region:

- Promote regional cooperation on extradition, mutual legal assistance and the recovery and return of proceeds of corruption.
- Afford one another the widest measure of mutual legal assistance, in investigations, prosecutions and judicial proceedings related to corruption and other offences covered by the UNCAC.
- Designate appropriate authorities in each economy, with comparable powers

on fighting corruption, to include cooperation among judicial and law enforcement agencies and seek to establish a functioning regional network of such authorities.

- Sign bilateral and multilateral agreements that will provide for assistance and cooperation in areas covered by the UNCAC. (Santiago Course of Action) These include:
  - o Art. 44 – Extradition
  - o Art. 46 – Mutual Legal Assistance
  - o Art. 48 – Law Enforcement Cooperation
  - o Art. 54 – Mechanisms for recovery of property through international cooperation in confiscation
  - o Art. 55 – International Cooperation for Purposes of Confiscation
- Work together and intensify actions to fight corruption and ensure transparency in APEC, especially by means of cooperation and the exchange of information, to promote implementation strategies for existing anticorruption and transparency commitments adopted by our governments, and to coordinate work across all relevant groups within APEC (e.g., SOM, ABAC, CTI, IPEG, LSIF, and SMEWG).
- Coordinate, where appropriate, with other anticorruption and transparency initiatives including the UNCAC, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, FATF, the ADB/OECD Anticorruption Action Plan for the Asia Pacific region, and Inter-American Convention Against Corruption.
- Recommend closer APEC cooperation, where appropriate, with the OECD including a joint APEC-OECD seminar on anticorruption, and similarly to explore joint partnerships, seminars, and workshops with the UN, ADB, OAS, the World Bank, ASEAN, and The World Bank, and other appropriate multilateral intergovernmental organizations.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Vietnam is an active member of some regional organizations and fora on inspection, complaint and denunciation settlement and anti-corruption, such as: SEA-PAC, ADB/OECD Initiative for anti-corruption in Asia and the Pacific, APEC ACT, AOA. The Government Inspectorate of Vietnam has signed bilateral agreements with relevant agencies of many economies in the region. Over the past years, Vietnam's regional cooperation in anti-corruption has continuously developed, focusing on: information, experiences and skills exchange, capacity building, investigation support, organisation of regional and international workshops.

Vietnam has also signed an agreement on legal assistance and extradition with Korea and is a member of the ASEAN Legal assistance Agreement. Vietnam has also signed the Agreement on Extradition and the Cooperation Agreement in transferring the imprisonment sentenced persons with Australia.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

Continue to actively participate in regional forums on anti-corruption, focusing on exchanging, sharing information, good practices on anti-corruption and other activities to strengthen the capacity.

Study on concluding bilateral and multi-lateral agreement on providing support and cooperation in fields of UNCAC.

VI. OTHER APEC ACT LEADERS' AND MINISTERS' COMMITMENTS

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LEADERS' AND MINISTERS' COMMITMENTS

- **2005:** Ministers encouraged all APEC member economies **to take all appropriate steps towards effective ratification and implementation, where appropriate, of the United Nations Convention against Corruption (UNCAC)**. Ministers encouraged relevant APEC member economies to make the UNCAC a major priority. They urged all member economies to submit brief annual progress reports to the ACT Task Force on their APEC anti-corruption commitments, including a more concrete roadmap for accelerating the implementation and tracking progress. (See Section I Above, UNCAC)
- **2006:** Ministers underscored their commitment **to prosecute acts of corruption, especially high-level corruption by holders of public office and those who corrupt them**. In this regard, Ministers commended the results of the Workshop on Denial of Safe Haven: Asset Recovery and Extradition held in Shanghai in April 2006. Ministers agreed to consider developing domestic actions, in accordance with member economy's legislation, to deny safe haven to corrupt individuals and those who corrupt them and prevent them from gaining access to the fruits of their corrupt activities in the financial systems, including by implementing effective controls to deny access by corrupt officials to the international financial systems.
- **2007:** We endorsed a model **Code of Conduct for Business, a model Code of**

Conduct Principles for Public Officials and complementary Anti-Corruption Principles for the Private and Public Sectors. We encouraged all economies to implement these codes and welcomed agreement by Australia, Chile and Viet Nam to pilot the Code of Conduct for Business in their small and medium enterprise (SME) sectors. (AELM, AMM)

- **2008:** We commended efforts undertaken by member economies to develop comprehensive anti-corruption strategies including efforts to restore public trust, ensure government and market integrity. We are also committed **to dismantle transnational illicit networks and protect our economies against abuse of our financial system by corrupt individuals and organized criminal groups through financial intelligence and law enforcement cooperation related to corrupt payments and illicit financial flows.** We agreed to further strengthen international cooperation to combat corruption and money laundering in accordance with the Financial Action Task Force standards. International legal cooperation is essential in the prevention, investigation, prosecution and punishment of serious corruption and financial crimes as well as the recovery and return of proceeds of corruption. (AELM, AMM)
- **2009:** We welcome the Anti-Corruption and Transparency Experts' Task Force's Singapore **Declaration on Combating Corruption, Strengthening Governance and Enhancing Institutional Integrity, as well as the APEC Guidelines on Enhancing Governance and Anti-Corruption**. We encourage economies to implement measures to give practical effect to the Declaration and Guidelines. (AMM)
- **2010:** We agreed to leverage collective action to combat corruption and illicit trade by promoting clean government, fostering market integrity, and strengthening relevant judicial and law enforcement systems. We agreed to deepen our cooperation, especially in regard to discussions on achieving more durable and balanced global growth, increasing capacity building activities in key areas such as combating corruption and bribery, denying safe haven to corrupt officials, strengthening asset recovery efforts, and enhancing transparency in both public and private sectors. We encourage member economies, where applicable, **to ratify the UN Convention against Corruption and UN Convention against Transnational Organized Crime and to take measures to implement their provisions, in accordance with economies legal frameworks to dismantle corrupt and illicit networks across the Asia Pacific region. (AELM, AMM)**

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Vietnam (together with Chile, Australia) had a pilot introduction of APEC Anti-Corruption Code of Conduct for Business to the community of small and medium enterprises. In June 2009, the Government Inspectorate of Vietnam in collaboration with the Vietnam Chamber of Commerce and Industry, Australian Department of Foreign Affairs and Trade held two workshops to introduce APEC Anti-Corruption Code of Conduct for Business and business anti-corruption principles for small and medium enterprises in Hanoi and Ho Chi Minh City under an APEC capacity building project.
The viewpoints of the small and medium enterprises of Vietnam in the two workshops and reviews of the experts and scholars have shown that the development of the Code of Conduct in each business is new to the business community of Vietnam. At the present time, the Chamber of Commerce and Industry of Vietnam is carrying out awareness raising activities for the business community on the prevention of corruption in suitable forms for Vietnam's realities such as through the media agencies, training courses and advocacy programs. Besides, the business gradually become familiar and positively response towards these rules of conduct are essential. To achieve this goal, there should be more propaganda activities, conferences, seminars about the rules of conduct to introduce and disseminate extensively in the business community. The Government Inspectorate of Vietnam will actively coordinate with the Chamber of Commerce and Industry of Vietnam in this activity.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

Continue to promote integrity culture in the business community.

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

The demand for technical assistance and financial resources to further promote integrity culture in the business community.